TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No 153.

THE ARIVACA LAND AND CATTLE COMPANY, APPELLANT,

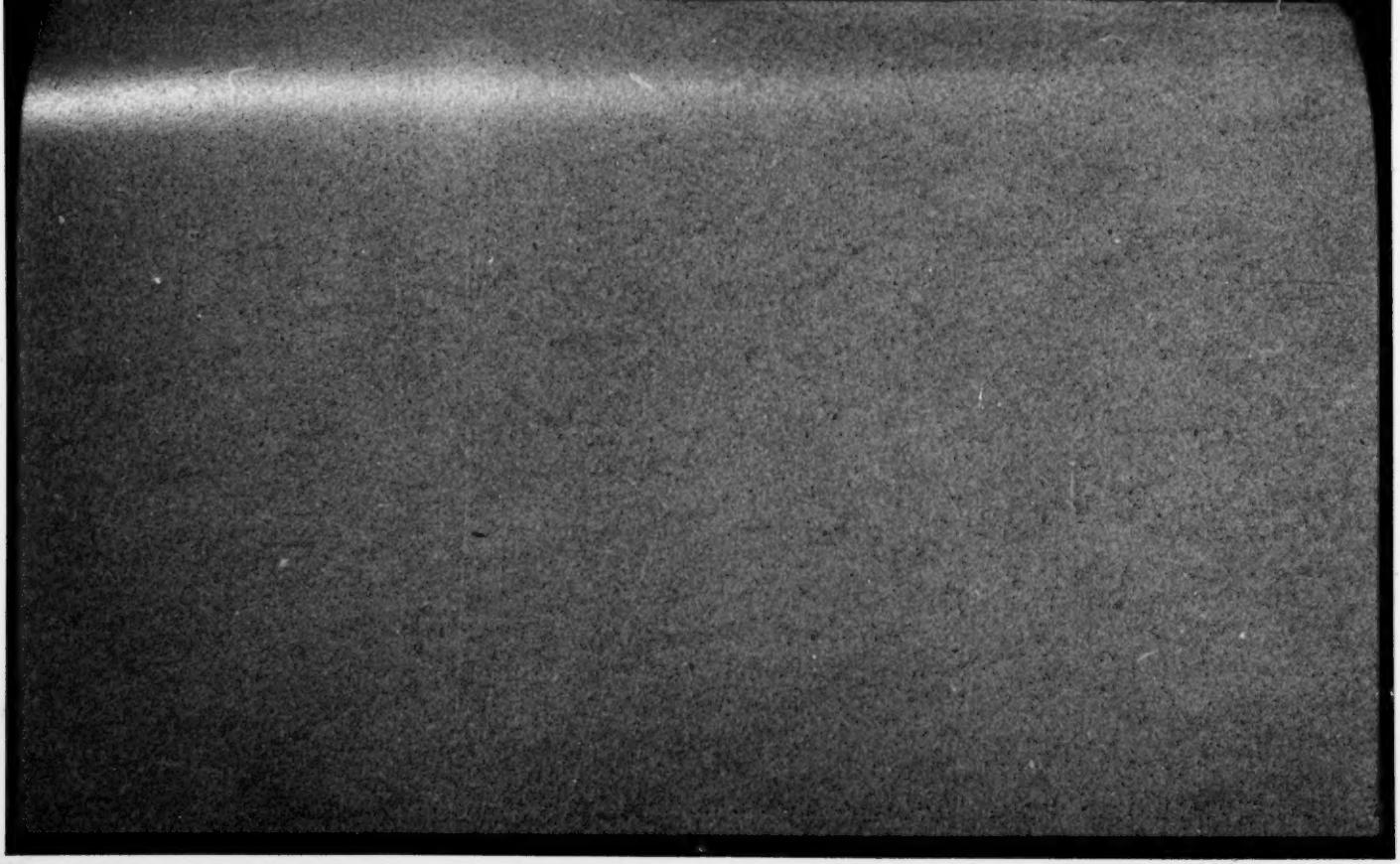
vs.

THE UNITED STATES ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

FILED SEPTEMBER 5, 1900.

(17,899.)



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1 UNITED STATES OF AMERICA,
Territory of Arizona.

Be it remembered that heretofore, to wit, on the first day of March, A. D. 1893, there was filed in the office of the clerk of the court of private land claims, at Tucson, in the Territory of Arizona, by the Arivaca Land and Cattle Company a petition; which said petition is in the words and figures following, to wit:

2 *The Petition of the Arivaca Land and Cattle Company, a Corporation Duly Organized, for the Confirmation of its Title in and to the Aribac Private Land Claim.*

UNITED STATES OF AMERICA,
Territory of Arizona, } ss:

In the United States Court of Private Land Claims.

THE ARIVACA LAND AND CATTLE COMPANY
vs.
THE UNITED STATES OF AMERICA, N. W. BERNARD, J. W. HOGAN, Salvador Piguitori, Ygnacio Ortiz, Antonio Aguirre, Antonio Cora, Indalcio Aguirre, Pedro Meranda, Jesus Silvas, Francisco Tapio, Charles Weatherington, W. S. McKnight, John Kelner, Ramon Zepedo, Pedro Zepedo, Patsey Powers, Miguel Moreno, Refil S. de Wilbur, J. B. Conti, H. Menager, H. N. Labaree, A. Hemme, —— Suarez, Richard Roe, John Doe, and Anselmo Anselmus.

Your petitioner, The Arivaca Land and Cattle Company, by C. W. Wright, its attorney, comes and shows:

That it is a corporation duly organized under and by virtue of the laws of the Territory of Arizona.

That it is the owner in fee, holder, and possessor of that certain tract of land lying, being, and situate in the county of Pima and Territory of Arizona, commonly known and described as "the Aribac" grant or private land claim, the same being more particularly hereinafter described.

That it own- in fee, holds, and possesses said lands under and by virtue of a certain instrument in writing, now and hereafter designated as being a grant title, bearing date the 2nd day of July, 1833, duly made and executed by the treasurer general of the State of Sonora, and by and on behalf of the State of Sonora, in the Republic of Mexico, under and by virtue of article II of decree number 70, passed on the 4th day of August, 1824, by the sovereign constituent congress of the United States of Mexico, which article con-

3 cedes to the States of the Republic of Mexico the rents or revenues which by said law are not reserved to the general government, one of which revenues is the vacant lands within the

respective States, which lands by reason thereof belong to such States, for the disposition of which lands under said decree the constituent congress of the State of Sonora and Sinaloa passed a law, numbered 30, bearing date the 20th day of May, 1825, and other decrees relative thereto by other successive legislatures, which decrees are embodied in sections three, four, five, six, and seven of chapter nine of the organic law of the treasary, said law being numbered 26, bearing date the 3d day of July, 1834, and especially the law numbered 30, bearing date the 20th day of May, 1825, then passed by the constituent congress of the then united States of Sonora and Sinaloa.

That under and by virtue of such laws and decrees such proceedings were thereunder lawfully, properly, and regularly had as that the said treasurer general of the said State of Sonora and Sinaloa and the government of the said State of Sonora, by its officers, duly authorized by the laws aforesaid, duly, properly, and regularly and for a good and valuable consideration, to wit, the sum of eight hundred and thirty dollars, and for other good and valuable considerations in said grant title set forth and described, did, on the said 2d day of July, 1833, sell and convey in fee unto Ignatio and Tomas Ortiz the land, hereinbefore mentioned and hereinafter more particularly described, known as the Aribac grant, and duly, properly, and regularly and for a good and valuable consideration, to wit, the consideration aforesaid, and for other good and valuable considerations, as aforesaid.

That the said Aribac grant was instituted in the year 1812, and that on the 10th day of October of said year said described land was by the officers of the Spanish government and by virtue of and pursuant to the authority on them conferred by the Spanish government, offered for sale at public vendue to the highest bidder therefor, and the same was then struck off and sold to one Don Augustin Ortiz, he being the highest bidder therefor at said sale; that the said Ortiz did, upon said land
4 being so struck off and sold to him, pay into the royal treasury of said Spanish government the amount of his said bid and all costs in that behalf incurred, amounting to the sum of seven hundred and ninety-nine dollars five reals and nine grains; that by virtue thereof an expediente was issued for said lands, but the same became lost and has not since been found; that thereafter, to wit, on the 2nd day of June, 1833, Ignacio and Tomas Ortiz, heirs-at-law of the said Don Augustine Ortiz, then dead, became the owners of said land as the sole and only heirs of said deceased, and because thereof did on said day petition the constitutional alcalde of and for that district, setting up and averring the facts aforesaid and praying that the depositions of three witnesses be taken, whereby to prove that said land was settled and possessed from said time in the year 1812 to the time of said petition and as to the landmarks and boundaries thereof; that pursuant to said petition an order was made that said depositions be taken on said land of said three witnesses; that on the third day of June, 1833, said depositions were taken, showing the said land, its boundaries and monuments; that it had been con-

tinuously occupied by said Don Augustin Ortiz until his said decease and from thence until the taking of said testimony by his said two sons as his sole heirs-at-law; that thereafter, to wit, on the 18th day of June, 1833, said Ignacio and Tomas Ortiz did petition the treasurer general of the State of Sonora, by virtue of article 27 of law No. 30, enacted on the 20th day of May, 1825, that said land be in due form granted to them; that on the 21st day of June, 1833, the said treasurer general did, in obedience to article 28 of said law, refer said petition to the government of the State of Sonora, with a statement as to the same; that thereafter the governor of said State did order that said grant be made to said Ignacio and Tomas Ortiz as prayed for by them, as aforesaid; whereupon and by virtue of the premises aforesaid the said treasurer general did make, execute, and deliver said grant, wherein and whereby said land was conveyed in fee, as aforesaid, and the said Ignacio and Tomas Ortiz did pay each and all the expense of said proceedings, amount-
5 ing to the sum of thirty dollars.

That the map hereto attached, marked Exhibit A, and made a part of this petition correctly represents as near as may be the land embraced within the said grant, the boundaries thereof, and where the same is situate.

That the original grant title or instrument of writing by which said title was conveyed and vested, as aforesaid, is not in the possession nor under the control of your petitioner, but *are*, together with other records and papers of said grant, in the possession and custody of the United States surveyor general of the Territory of Arizona, at the city of Tucson; that because thereof said original document constituting and creating said grant, together with transcripts or copies thereof, cannot be herewith presented or delivered, nor can copies of said grant be now furnished, as required by the rules of this honorable court, but that when, by order of this court, the said original title paper is produced your petitioner will furnish the necessary and requisite copies of each of said instruments in the Spanish and English languages.

That under and by virtue of the provisions of the eighth section of the act of Congress approved July 22, 1854, entitled An act to establish the office of surveyor general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes, and under acts amendatory or in extension thereof or supplemental thereto, the ones then claiming to own said grant, during the fall of the year 1880, in the office of the United States surveyor general for the Territory of Arizona, filed their petition asking for the confirmation to them of said grant, accompanying which said petition were the original title papers of said grant; that thereupon said surveyor general caused said grant to be investigated by one R. C. Hopkins, a duly authorized and competent agent of the United States; that the said surveyor general did, to further enquire into the premises of said petition, hear evidence, which was reduced to writing and is now filed with said papers in his said office, and, all things having been seen and fully un-
6 derstood by him, he did thereupon make his report thereof

to Congress and did therein report that said grant was in all things genuine, valid, and a subsisting grant, and did recommend the confirmation of said grant to the owners thereof, but that no action was taken thereon by Congress or by any authorities of the United States.

That said grant, at the time of the execution of what is known as the "Gads-en treaty," the same being a treaty made and entered into by and between the United States, on the one side, and the Republic of Mexico on the other, the said grant was duly recorded in the archives of Mexico, was then and ever since then has been and now is a valid and subsisting grant of said land, and was and is in all things regular and legal, and did by virtue thereof vest the title in and to said land *and* said grantees.

That your petitioner owns, holds, and possesses said grant under and by virtue of divers and sundry mesne conveyances made by the original grantees, the said Ignacio and Tomas Ortiz, and their grantees to your petitioner, all of which conveyances are on file and of record in the office of the county recorder of deeds in and for the said county of Pima; abstracts thereof your petitioners will furnish and supply to this court at such times and upon such terms as this court may be pleased to direct.

That the said original grantees of said grant were Mexicans of the Republic of Mexico, and that at the time of the making of the said Gads-en treaty the owners of said grant were likewise citizens of the Republic of Mexico.

That all the steps and proceedings taken, had, and made in and about the sale of said land, as aforesaid, were each and all regular, complete, in due and full conformity with the laws, regulations, and customs then in force for the conveyance of land by grant, and vested a perfect and valid title in fee in and to said land in said grantees; that said grantees were at the time said grant was made in the actual possession of said land, using and occupying the same, having theretofore erected thereon the proper monuments, and that
7 said grantees and their successors have continued from thence hitherto and are now in the actual occupation and use of said land and are now seized in fee thereof; that said grant is a complete, definite grant in fee, by way of sale, coupled with the condition subsequent not to abandon the same for a longer period than three years without good reason, which would subject the tract to adjudication to third parties in the event of their applying to denounce the same; that no forfeiture of said grant has been or is claimed, and no one ever applied to denounce the same, and your petitioner is entitled to a confirmation of said grant in accordance with the metes and bounds set forth in the original surveys and grants of the same.

That the land claimed by your petitioner is all the land embraced within the original survey of said grant to the boundaries established and described therein, and that said land is the land embraced within the accompanying map filed herewith, as aforesaid.

Your petitioner further alleges on information and belief that there are no persons in possession or any part or portion of said land

save the persons made respondents hereto; that said persons so named as respondents herein, except only the United States, possess severally certain of said land and claim and hold the same adversely to said grant and to the said title of your petitioner; that the only claim made by said respondents, in so far as your petitioner is advised and has been informed, is that said grant is void in law.

Wherefore your petitioner prays that the validity of the said title may be enquired into and decided; that the title of your petitioner in and to said land be declared valid and complete, and for such other and further relief as to the court may seem meet and proper in the premises.

(Signed) CHARLES WESTON WRIGHT,
HENEY & FORD,
Attorney- for Petitioner.

Endorsed: Filed March 1, 1893. James H. Reeder, clerk, by R. L. Long, deputy clerk. Petition.

And be it further remembered that on said 1st day of March, A. D. 1893, a summons was issued by the clerk and delivered to the attorney for the plaintiff, but said summons has not been returned to the clerk's office.

[Endorsed:] Arivaca. F No. 1.

8 *Answer of U. S. Attorney.*

UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Arizona District.

THE ARIVACA LAND & CATTLE CO., Plaintiff,
vs.
THE UNITED STATES ET AL., Defendants. } No. 7.

Comes now the United States, by its attorney, to answer to the petition filed in the above-entitled cause,— says:

That as to whether the allegations contained in said petition are true it has no knowledge or information sufficient to enable it to form a belief, and therefore denies the same and asks that said plaintiff's claim be rejected and the petition be dismissed.

(Signed) MATT. G. REYNOLDS,
U. S. Attorney.

C # 7, F No. 8. Filed in the office of the clerk, court of private land claims, Feb. 27, 1894.

JAS. H. REEDER, *Clerk,*
By R. L. LONG, *Deputy.*

[Endorsed:] No. 7, F No. 8. Answer.

9 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Arizona District, 1895.

THE ARIVACA LAND & CATTLE CO., Plaintiffs, *vs.* UNITED STATES, Defendant. } No. 7*b*. Aribac Grant.

Answer.

Comes now the United States, and for its separate answer to so much of said petition as it is advised to be answered, says:

That as to whether or not the plaintiff is a corporation duly organized under the laws of the Territory of Arizona it has no knowledge or information sufficient to enable it to form a belief.

It denies that the plaintiff is the owner in fee, holder, and possessor of a certain tract of land situated in Pima county, Arizona, commonly known and described as the Aribac grant or private land claim.

It denies that it owns in fee, holds, and possesses the same under and by virtue of a certain instrument in writing, designated as being a grant title, bearing date the 2nd day of July, 1833, alleged to have been executed by the treasurer general of the State of Sonora by and on behalf of said State, in the Republic of Mexico, under and by virtue of article II of decree No. 70, of the 4th of August, 1824, enacted by the constituent congress of the United States of Mexico.

It denies that said article or any other concedes to the States of the Republic of Mexico the rents or revenues which by law are not reserved to the general government, one of which revenues is the vacant lands within the respective States; which said lands, by reason of said decree, it claims belongs to the States.

That as to whether or not the constituent congress of the States of Sonora and Sinaloa passed a law, No. 30, bearing date the
10 20th day of May, 1825, or other decrees relative thereto by other successive legislatures, which said decrees are embodied in sections 3, 4, 5, 6, and 7 of chapter 9, the organic law of the treasury, being No. 26, dated July 3rd, 1824.

It denies that under and by virtue of said laws the treasurer general of the States of Sonora and Sinaloa and the government of the State of Sonora, by its officers duly authorized by law, duly, properly, and regularly, for a good and valuable consideration, in the sum of eight hundred and thirty dollars or any other sum, did on the 2nd day of July, 1833, sell and convey in fee to Ygnacio and Tomas Ortiz the land before mentioned as the Aribac grant.

It says it has no knowledge or information sufficient to enable it to form a belief as to whether or not said Aribac grant was instituted in the year 1812, or that on the 10th day of October of the same year said land was by the officers of the Spanish government offered for sale at public vendu- to the highest bidder, and that the same was

then struck off and sold to one Don Augustine Ortiz, the highest bidder.

It has no knowledge or information sufficient to enable it to form a belief as to whether said Ortiz paid into the royal treasury of the Spanish government the amount of said bid or any other amount.

Further answering, it says it has no knowledge or information sufficient to enable it to form a belief as to whether upon said sale in 1812 an expediente was issued for said land, or that the same has since been lost or destroyed, but it says that whatever proceedings may have been taken toward procuring said property in 1812, the same was never carried to final title of grant, and the title never passed from the Spanish government.

Further answering, it says it has no knowledge or information sufficient to enable it to form a belief as to whether on the 2nd day of June, 1833, Ygnacio and Tomas Ortiz were the heirs-at-law of said aforementioned Augustine Ortiz, but it denies that they became on his death the owners of said land.

11 It says that it has no information as to whether, on the 2nd day of June, 1833, they petitioned the constitutional alcalde of that district, averring on facts aforesaid, praying that the depositions of three witnesses be taken to prove thereby the said land was settled and possessed from the year 1812 to the time of said petition, and to prove the landmarks, the boundaries thereof, but if the same was done, as alleged, it was without warrant or authority of law and void.

It has no information as to whether the depositions of said three witnesses were, upon the 3rd day of June, 1833, taken, showing the said land, its boundaries and monuments, and that it had been continuously occupied by Augustine Ortiz until his death, and from thence, until the alleged taking of said testimony of said three witnesses aforesaid, by his two sons, but if the same was done, it was without warrant or authority of law and void.

It says it has no information as to whether or not, on the 18th day of June, 1833, Ygnacio and Tomas Ortiz petitioned the treasurer general of the State of Sonora, by virtue of the law of May 20th, 1825, or any other law, that said land be in due form granted to them, or that on the 21st day of June, 1833, said treasurer general referred said petition to the government of the State of Sonora as to the statement of the same, or as to whether the governor of said State ordered said grant to be made to said Ygnacio and Tomas Ortiz, or as to whether said treasurer general, under the proceedings aforesaid, did execute and deliver said grant, wherein he undertook to convey in fee the said land to Ygnacio and Tomas Ortiz, but that if said proceedings were had and taken, the same were without authority of law and void.

Further answering, it says it has no knowledge or information as to whether said Ygnacio and Tomas Ortiz did pay all the expenses of said proceedings, amounting to the sum of thirty dollars, or not, but that if they did do so, the same was in violation and contrary to the terms of the law under which it is alleged said pretended title was issued; and this, that said law before referred to required

that such titles as it authorized to be issued should be gratis, and no law existed for the payment of such fees prior to 1834,
12 and that said payment was evidently made under the provisions of the law of the State of Sonora of 1834, and it pleads that said grant was antidated and not made, if at all, upon the date it purports to have been made.

That as to whether said map attached to said petition correctly represents the boundaries thereof and where the same *is* situated it has no knowledge sufficient to enable it to form a belief.

That as to whether or not plaintiff owns, holds, and possesses said grant under and by virtue of sundry and mesne conveyances made by alleged original grantees, Ygnacio and Tomas Ortiz, and their grantees, it has no knowledge or information sufficient to enable it to form a belief.

It denies that all of said alleged steps and proceedings had and made in and about the alleged sale of said land were each and all regular, complete, and in due and full conformity with the laws, regulations, and customs then in force for the conveyances of land by grant.

It denies that the same if taken vested a perfect or an imperfect valid title in fee or in equity in and to said land to said alleged grantees.

Says it has no information as to whether or not at the time said grant is alleged to have been made the grantees were in possession of the same, using and occupying it, or that they had theretofore erected thereon proper monuments, or as to whether they or their successors have continued from thence hitherto or are now in the actual occupation and use of said land, and denies that they are now seized in fee or in equity thereof.

It denies that said grant is either definitive in fee or equity by way of sale coupled with the conditions that they should not abandon*ed* the same longer than three years for any cause.

It denies that if said grant was made and any rights vested thereunder that the same have not been forfeited, but, on the contrary, pleads that under the provisions of law of the national government of Mexico all persons in possession of lands in the years 1833
13 and 1834 were required to present their titles or claims to the national government for *the* confirmation and examination within the space of six months, and, failing to do the same, was forfeited and abandoned to the government; and it now pleads this failure as an abandonment and forfeiture and a bar of any remedies against the Mexican government or any against the United States.

That as to whether or not the land claimed by the plaintiff is embraced within the original survey of said grant and is correctly set forth by the map filed with the petition, it has no knowledge or information sufficient to enable it to form a belief.

It says it is true that the United States claims said land adversely to the plaintiff.

Further answering, defendant says that said grant appears to have been issued, if at all, by the treasurer general in the year 1833.

It says that said grant had not been properly located prior to the 30th day of December, 1853.

Further answering, it says that pending negotiation of the treaty of Mesilla, which was finally signed on the 30th day of December, 1853, the status of the public lands situated in the Republic of Mexico, and particularly in that portion which was ceded by said treaty to the United States, was declared by lawful and competent authority, on the 25th day of November, 1853, under and by virtue of a decree of said date, wherein it was declared that the public lands were and had been the exclusive property of the nation and never could have been alienated under any title by virtue of decrees, orders, and enactments of the legislatures, governments, or local authorities of the States and Territories of the Republic. Said decree also declared that sales, concessions, or other class of alienations of said public lands that had been made without the express order and approval of the general powers in the manner prescribed by the laws are null and of no value and effect.

Wherefore defendant pleads that the status of the property acquired by the treaty of Mesilla having been declared and
14 determined by lawful authority, to wit, the sovereign and treaty-making power, to be free of any encumbrance, right, or claim by reason of the action of any State, State government, or official, the same was received by the United States under said declaration or decree, free from said claims, and it is not bound by the laws of nations, the treaty of cession, or the act creating this court to recognize the same.

Wherefore it prays that said grant be declared void and rejected and the petition dismissed.

MATT. G. REYNOLDS,
U. S. Attorney.

Filed in the office of the clerk, court of private land claims, March 20, 1895.

JAS. H. REEDER, *Clerk*,
By —— ——, *Deputy.*

15 And be it further remembered that thereafter, to wit, on the 26th day of March, A. D. 1894, before the court, sitting at Tucson, the following order was made:

THE ARIVACA LAND AND CATTLE CO.
vs.
UNITED STATES ET AL. } No. 7.

On motion of Heney & Ford, attorneys for petitioners, leave was granted by the court to file amended petition herein.

And be it further remembered that afterwards, to wit, on the 20th day of March, A. D. 1895, before the court, sitting at Tucson, Arizona, the following proceedings were had:

THE ARIVACA LAND AND CATTLE COMPANY
vs.
THE UNITED STATES ET AL. } No. 7. Aribac Grant.

By permission of the court, first obtained, the *the* attorney for the United States filed further answer to the plaintiff's petition.

The cause now came on regularly for trial. Rochester Ford, Esq., appeared for the plaintiff, and Matt. G. Reynolds, U. S. attorney, and W. H. Barnes, Esq., of counsel, appeared for the United States and the other defendants.

After a statement of the case by the attorneys for the respective parties, the plaintiff called Ignacio Bonillas as a witness, who was sworn and examined. Certain documents were also submitted in evidence by the plaintiff, and are clearly marked by number and appear among the files of this case. The defendant offered no testimony. After argument by counsel, the matter was submitted to the court for decision and was by the court taken under advisement.

The following is the evidence, both oral and documentary, submitted:

16 In the Court of Private Land Claims, District of Arizona, March, 1895.

THE ARIVACA LAND AND CATTLE COMPANY
vs.
THE UNITED STATES OF AMERICA. } No. 7.

Transcript of the proceedings had and evidence offered upon the trial of the above-entitled cause, at Tucson, Territory of Arizona, commencing on the twentieth (20th) day of March, A. D. 1895, at 10 a. m.

YGNACIO BONILLAS, a witness called and sworn on behalf of the petitioner, testified as follows:

Direct examination.

By Mr. FORD:

—. State your name, age, and residence.

A. Ygnacio Bonillas. I am a mining engineer and surveyor; my residence is Magdalena, State of Sonora, Mexico.

Q. What education have you had and where, as a civil engineer, and what experience and practice have you had in your profession?

A. I was educated in Massachusetts, at the Boston University of Technology. I took a course in mining engineering and surveying. I have practiced my profession as a surveyor, in land surveying, mining surveying, and surveys of grants, since the year 1883.

Q. In what country or countries?

A. Both in the United States and Mexico.

Q. You are thoroughly familiar with the Spanish language, are you not?

A. Yes, sir; it is my native tongue.

Q. What, if any, official positions in the State of Sonora have you held?

A. I have held several positions there. I have been mayor of the city of Magdalena. I have been prefect of the district of Magdalena. I have been official mining inspector of the district, official examiner of mining and milling machinery, and I have held several other positions.

17 Q. What experience, if any, have you had in surveying land claimed under grants from the Mexican government or State of Sonora?

A. I have made a great many surveys of grants of that nature; a great many, both in Sonora and in this Ter-itory.

Q. Did you ever make any examinations in the city of Hermosillo, State of Sonora, of expedientes of land grants in the archives of the treasury department there? If so, state to what extent those examinations went.

A. I have made several examinations, and have examined a great many of the titles in the treasury of the State, and have taken notes from them.

Q. Did you in the course of those examinations encounter the signature of Jose Maria Mendoza?

A. I have very often seen the signature on documents in the treasury.

Q. Have you at any time seen his signature in the book of Toma de Razon?

A. I think I have.

Q. I hand you a paper from the office of the surveyor general of Arizona, marked "Exhibit A, titulo Aribac," recorded in Journal, vol. 2, page 100, and ask you to examine the signature appended to that document and state whose it is.

A. (After examination.) I believe it to be the signature of Jose Maria Mendoza.

Q. What do you say as to your opinion as to the genuineness of that signature?

A. I think that it is genuine, both from the form and style of writing.

It is stipulated that the document shown to the witness is what it is claimed to be, the original titulo to the Aribac land grant, which was filed in the office of the surveyor general of Arizona, under the provisions of the act of Congress of July 22, 1854, and as -tended by the law of 1870 and amendments.

By Mr. FORD: We now offer in evidence a translation of the original titulo in this case. (Same marked Exhibit "A.")

It is stipulated that the original titulo in Spanish need not be incorporated into the record of this case, as it is agreed that the translation offered in evidence of same is correct.

By Mr. FORD: Plaintiff offers in evidence certified copy of the entry of record of the Aribac grant in the book of Toma de Razon,

existing in the office of the treasurer general of the State of
18 Sonora, at Hermosillo, Sonora.

(Said document was thereupon marked Exhibit "1.")

Plaintiff offers in evidence a translation of the same.

(Said document was thereupon marked Exhibit "2.")

Q. Mr. Bonillas, did you ever make a survey of the Aribac land grant?

A. I did.

Q. Please state when you made that survey and the results of it.

A. I made the survey of the grant in the latter part of February and during February and March of last year, and I obtained an area for the survey within the monuments found and those established by me of 26,508.06 acres.

Q. Now, state in detail how you made that survey.

A. I made it by triangulation. I measured a base line on a level place across the valley and established flags in the four or five monuments and other trigonometrical stations it being necessary to establish. I measured the base line carefully, and then from both ends of it and from all these flags that I established I made observations, and then calculated, and thus formed the net of triangulations to determine the basis of these measurements and distances.

Q. Did you find the place "Old Aribac"?

A. I did.

Q. Where is that located with reference to the map?

A. That is located about a mile and a half northwest from the town of Aribac, along the road,

Q. State, if you please, how you knew that to be the place of old Aribac.

A. I made inquiries about the original settlement of the grant, and people who have lived there and a great many others who have traveled along that road in this country and in Sonora told me that that was about the first settlement, and there are ruins of houses that indicate that there was at one time a settlement there.

Q. Do you now recall what is called for in the title papers as the monument on the north?

A. I do; yes, sir.

Q. What is the monument at that point?

A. The north centre monument is described as being on the top of the "devisadero," which means "lookout hill" or "look-
19 out mountain." It reads, On this side of the Tagito mine. It seems that these directions were being taken from the old Aribac settlement. On this side of the Tagito mine, the devisadero would be towards the south of the Tagito mine. I made inquiries as to that mine and nobody seems to know anything about it. The description in the title papers further says that this "devisadero" borders on the Sierra de Buenavista. Nobody seems to know anything about the Sierra de Buenavista. There is only one chain of mountains to which the title papers can refer; that is known as the Guija mountains.

Q. Did you find there a "devisadero" or pointed hill?

A. I did.

Q. Describe it.

A. There are a number of hills that would answer that description, but there are no monuments on the tops of these hills other than United States locations monuments, which were established not a great many years back. I found one hill which I think and which I believe is the "devisadero" to which the title refers. That hill borders on a chain of mountains, and on its top I found a very old monument, and when you get on the top of that hill you can view the country all around; it is a "devisadero," and there is a monument on it, and it is not a United States official monument.

Q. Is that the "devisadero" which you have indicated on your map?

A. Yes, sir.

Q. Did you locate what is called for as the landmark or monument towards the south?

A. I did. The title papers say that the south centre monument is established on a low hill on this side of the Longorena mine—they are speaking from old Aribac—so the monument must be north of the Longorena mine.

Q. Did you find such a hill as was described?

A. I did. The Longorena mine is a mine that is well known, even to the present time; it is located on the trail that goes from this part of the country to Sonora, and it is well known, and it is so known to the present time; so I went to that mine, and then from there I looked towards the north; and the description further says that this hill where the monument is is situated near a gulch, where there is a rough growth of timber. There is only one gulch—the Marguita gulch. I looked for this monument on both sides or banks of this gulch, and I found a very large old monument on a low hillock, just exactly as described. Furthermore, this monument is nearly in line with old Aribac and the lookout hill, "devisadero." They are nearly in line.

Q. Do you recollect, Mr. Bonillas, the description from the title papers of the monument towards the east?

A. I do. The monument is described as being a "mesquite tree, with a cross cut into it," it being, as the title papers say, up the valley from the spring, and the boundary on the east as the Calaberas mountains.

Q. State if you found anything answering this description.

A. The spring known to be the source of the Aribac creek is about a mile southeast of old Aribac. That is and has been a very well-known spring there. I looked up the valley from that spring, as the title paper says, on both sides of the valley, for a monument that would answer the description. I did not find any monument that would answer the description, and until I got half a mile from a little chain of mountains that run about right angles from the course of the valley on the east, and on the low ground, I found a very large stump of a mesquite tree about two feet and a half in diameter, and from this stump, being in low ground, you cannot see the surrounding country. I think within five hundred feet, ascending from the

north to the valley, there is a very large monument and a very old monument. You can see from this monument—I think you can see the old Aribac ruins and the west centre monument, and they are almost in a straight line, and this monument must have been put there to mark the eastern boundary of the grant, and I took it as such.

Q. Do you remember the monument called for on the west?

A. I do.

Q. Please state.

A. The title says the monument was established upon a lookout hill at the Punta de Agua. I went to the west, to the water or creek that runs there, and at the proper place I found the monument. It is there—a very old one. It is on a very high hill, at the Punta del Agua, and all the points are known by those same names today. It is undoubtedly the west centre monument.

Q. You found the pointed hill, or "devisadero"?

A. Yes, sir; I did.

Q. Do you recollect the description is, "opposite the Sierra de Babuquivari"?

A. I do. The title says that this monument is on this hillock, fronting the Sierra Baɔuquivari, and if you stand at the old ruins and look at the west centre monument you will see that it is towards the Babuquivari mountains. The mountains form the background.

21 Cross-examination.

By Mr. REYNOLDS:

Q. Did you ever examine the archives at Hermosillo for this grant?

A. No, sir; I have not. I have not made an examination for the title of the Aribac grant.

By Mr. FORD: We will admit, if the court please, if it is there we cannot find it. We have hunted for it and cannot find it.

Q. Did you make any search for it?

A. No, sir; I did not.

Q. You say you took the calls for this grant from the title papers. What part of the title papers—the patent itself?

A. No, sir; I took it from the testimonio of the surveyor general's office.

Q. Wasn't there attached to that a patent or grant of the Aribac grant?

A. I suppose it is.

Q. Wasn't there a last note or endorsement attached to it?

A. I don't know whether it is or not. I simply took the field-notes of the survey.

Q. Now, look at the last endorsement, signed by Mendoza, and tell me whether or not that is not the final patent or grant.

A. Yes, sir; it is.

Q. That is the original, is it not?

A. Yes, sir; it is the testimonio.

Q. I am speaking now of that part of the endorsement to which I have called your attention, signed by Mendoza—the final patent or grant. That is the original, is it not?

A. I don't know what you mean by "original."

Q. Don't *know* you know what I mean by original?

A. Do you mean the original title?

Q. I mean the extension or grant—the original grant.

A. Yes, sir; this is the original title.

Q. Preceding that and the part that goes before is a copy, is it not—a testimonio?

A. I call the whole document here a testimonio. It is the first copy or the testimonio of the proceedings gone through for the acquisition of this grant—of this title. The testimonio is the title or the first copy issued from the original expediente.

22 Q. Now, that part which precedes what you have indicated as the grant or patent is copied from the original proceedings which are or should be on file at Hermosillo?

A. Yes, sir.

Q. The original history of the proceedings leading up to the final grant is called the expediente, or history of the proceedings?

A. Yes, sir.

Q. Then a copy of that is made and attached to the foot of it is the original grant, and that is delivered to the party as evidence of title?

A. Yes, sir.

Q. Do you find any endorsement in that instrument to the effect that it was recorded in the book of records?

A. Yes, sir.

Q. Does it purport to give the page of the book—where it is recorded?

A. Yes, sir.

Q. Have you had occasion to examine the Toma de Razons of grants, in Hermosillo, especially?

A. Yes, sir; to some extent.

Q. I will get you to state whether it is not the general rule—in fact, the invariable rule—that where you find the record of the grant in the Toma de Razon, and you get the title, you will not find upon it the *the* endorsement of the record and the page given in the endorsement, just as this one is?

A. I cannot say. I don't know.

Q. You have never had occasion to examine as to that question. If you couldn't take the proceedings which are copied from the expediente—if they were gone from that instrument and nothing were left except the final patent signed by Mendoza—could you take this grant and locate it?

A. I could not.

Q. And it is only by reference to the testimony of witnesses taken before the alcalde upon the petition of Tomas and Ygnacio Ortiz, in the titulo or expediente, that you are able to locate this grant?

A. Yes, sir; only those declarations and the field-notes of the original survey.

Redirect examination.

By Mr. FORD:

Q. When you say you could not locate this grant upon the fin
patent, you don't mean to say you could not locate it upo
23 the testimony and proceedings in the original grant?

A. I say I can. I could not locate the monument on th
paper signed by Mendoza, because in making the grant they do n
give any description of the monuments or boundaries; they refer
the boundaries as originally established in the surveys and on t
declarations of witnesses, as the case may be.

Q. According to the declarations of witnesses and the proceedin
in this titulo which you have, you made this survey?

A. I did.

Recross-examination.

By Mr. REYNOLDS:

Q. In the examination of expedientes at Hermosillo, do you fi
attached to the original expedientes a grant or patent, such as sign
by Mendoza, which you have designated as the last note, and t
original?

A. Not as a general thing.

Q. You sometimes find an original expediente or borrador of t
grant—an unsigned copy?

A. Yes, sir.

Q. Do you know of any instance where you find attached to t
expediente *and* full and complete copy of the patent which is attach
to the testimonio?

A. I do not remember.

Q. In other words, the expediente remains on file in the archive

A. Yes, sir.

Q. And (continuing) a copy is made of that, and to that copy
attached the original patent or grant, and a note is made of th
grant in the Toma de Razon?

A. Yes.

Q. (Continuing:) That, then, is delivered to the party as eviden
of title?

A. Yes, sir.

Q. That is the form of the records at Hermosillo on all regul
land grants?

A. Yes, sir.

Q. That's all.

By Mr. FORD: I offer in evidence, if the court please, the derai
ment of title filed in this case.

(Said document was thereupon marked Exhibit "3.")

I offer in evidence also the map testified to by the witne
24 (Said map was thereupon marked Exhibit "4")

Further cross-examination of Witness BONILLAS.

By Mr. REYNOLDS:

Q. What was the area you got, Mr. Bonillas, in your survey?
A. 26,508.06 acres.
Q. How many sitios would that be?
A. About six sitios.
Q. Now, in surveying this property you didn't take into consideration the area granted of two sitios, did you?
A. No, sir.
Q. Did you notice in the title the fact that the area of this grant was two sitios?
A. Yes, sir.
Q. In making your survey you gave that practically no attention?
A. Not at all. I wanted to locate the grant according to the calls and the monuments.
Q. What kind of stone did you find in the monuments that you speak of?
A. The stones that constituted the formation of the country.
Q. You mean piles of stones. Do you think those piles of stone were piled up in 1812?
A. I think they were, from the location of the monuments.
Q. As far back as 1812?
A. Yes, sir.
Q. You think those monuments could not have been built since that time?
A. I suppose they could. The fact that they answer the description, I assume that they are the original monuments.
Q. You say you think they are the original monuments because they conform as near as may be to the description?
A. Yes, sir.

It is admitted, so far as the investigation by the plaintiffs as well as by the Government —, that they have been unable to find the original expediente on file in archives at Hermosillo. I mean either the expediente of 1812 or the expediente of 1833, on which this title is based.

By Mr. FORD:

Q. Will you describe more fully the appearance of those monuments and what, if anything, gave you the impression that they were of great age and might have been built in 1812?
25 A. These four monuments of the Aribac land grant seem to be very old, because the rocks at the base of the monument are almost covered with sand the wind has carried there. Some of the rocks are mossy, and have not been disturbed for many years, and look very much like those I have examined in grants that were made a hundred years or more, in various parts of the State of Sonora—very much like old monuments I have found on grants.

By Mr. REYNOLDS:

Q. The fact that sand is deposited around them is no evidence of age, is it?

A. I think it is.

Q. Sandy country, isn't it?

A. No, sir.

Q. Sand drifts very much through that country, doesn't it?

A. No, sir. There is no sand at all, and that is a fact that shows the great age of the monuments.

Witness excused.

Petitioner rests.

And the Government rests.

Case argued and submitted.

I hereby certify that the above and foregoing ten (10) pages contain a full, true, and correct transcript of the evidence offered and proceedings had upon the hearing of this cause, to wit, the case of Aribac Land and Cattle Co. *vs.* The United States, involving the title to the property claimed as the Aribac grant, in the Territory of Arizona.

LYMAN F. PARKER, JR.,
Official Stenographer.

Tucson, A. T., March 1, 1895.

26 PLAINTIFF'S EXHIBIT "A."

Titulo

Of grant of two sitios of land for raising cattle and horses, which comprise the place called Aribac, situated in the jurisdiction of Pimeria Alta, issued by this treasury general in favor of the citizens Tomas and Ygnacio Ortiz, residents of the presidio of Tubac.

27 [SEAL.]

Sello segundo doce reales. Para los años de 1833 y -834.

Jose Maria Mendoza, treasurer general of the free, independent, and sovereign State of Sonora: •

Whereas article 11 of the superior decree No. 70, issued by the General Congress of the Union, dated August 4, 1824, concedes to the States all the revenues which in said decree are not reserved to the federation, and whereas one of said r-venues is that obtained from the lands of their respective (State) districts, which consequently belong to them, and for the disposal of which the law No. 30 of the 20th of May, 1825, was enacted by the honorable constituent congress of the State, then united of Sonora and Sinaloa, as well as other decrees on the subject issued by subsequent legislatures, and whereas Tomas and Ygnacio Ortiz, citizens of Tubac, have instituted proceedings on the legal possession, measurements and

appraisement of two sitios of land for raising cattle and horses in the place called Aribac, in the jurisdiction of Pimeria Alta, which reads literally as follows:

I, Antonio Carrillo, treasurer of Arizpe, State of Sonora, do hereby certify that on page 85 of the manual book corresponding to the year 1812, the following entry is found:

October 10.—Charged seven hundred and ninety-nine dollars five reales and nine grains paid to this royal treasury by Don Jose Carrillo, in the name of and as attorney for Don Augustin Ortiz, a citizen of the presidio of Tucson, in the following manner: 747 dollars and 3 reales as the highest bid for which two sitios of land for raising cattle were recently sold to him at auction by this intendencia, which land comprises the old and depopulated town or settlement called Aribac, situated in the jurisdiction of Pimeria Alta;

28 37 dollars and 3 reales as the royal impost of media annata, and the remaining 14 dollars, 7 reales and 9 grains as the two per cent. of general impost as explained in the order marked No. 329.

$799, 5 rs. 9 gs.

BUSTAMANTE.
ROMO.
JOSE CARRILLO.

[SEAL.]

And that the same may be valid whenever it is necessary and as demanded by the interested party, I issue this certificate in duplicate and on ordinary paper, in default of official paper, at Arizpe, on the 18th of June, 1833.

ANTONIO CARRILLO.

To the constitutional alcalde:

The citizens Tomas and Ygnacio Ortiz appear before you and say that in the year 1812 our deceased father, Don Agustin Ortiz, paid into the treasury of the capital of Arizpe $747 and 3 reales, as the highest bid for which two sitios for raising cattle were sold to him at public auction, which land is situated in the place called Aribac, we likewise state that we are ignorant as to who was the surveyor or where the expediente containing the measurements, appraisement and auctions is now, but that it is more than probable that it passed through the usual process and it was perhaps either lost or filed in some of the offices through which it had to pass in order that the last requirements might be fulfilled upon it, which is the reason why the title was not issued. We therefore ask of you to have the kindness to order three sworn depositions to be made by as many individuals who are informed thereon, and who will declare if said land has been settled and occupied by the interested parties since that time up to the present, and furthermore whether the landmarks and boundary lines which show its limits are the same that existed then and at the present time at the four cardinal points, and

we further ask of you to turn over to us the orignal testimony
29 when taken, that we may use it for our desired purpose. We swear that we act without malice and to all that is necessary, etc.

TOMAS ORTIZ.
YGNACIO ORTIZ.

TUBAC, *June* 2, 1833.

The above petition has been presented and accepted. Let the informations asked for by the interested parties be taken and returned to them in the original for the ends that may be necessary. Atanacio Otero, constitutional alcalde of this place, thus decreed, ordered and signed the same with assisting witnesses in default of the clerk prescribed by law.

ATANACIO OTERO.

Witness:
GERONIMO DE LA ERRAN.

Witness:
JOSE GRIJALVA.

On the third day of said month and year, I, the acting constitutional judge, being at present at the Aribac ranch, together with the witnesses Lorenzo Carrisosa, Jose Sanchez and Bernardino Madrid, persons who are better informed on the matter at issue, and who at present reside at the presidio of Tubac, about six leagues distant from this place, summoned Lorenzo Carrisosa who, having been sworn as is customary, under which oath he promised to speak the truth in everything about which he was questioned, and having been asked to state whether said Aribac ranch has been settled and occupied by the deceased Don Agustin Ortiz and heirs since the year 1812 up to the present time, and whether the landmarks that designate its boundaries are the same that have existed and do exist

[SEAL.]

today in the four cardinal points, said that from said year 1812 up to his death Don Agustin Ortiz kept said Aribac ranch settled and occupied, and that his sons Don Tomas and Don Ygnacio Ortiz had kept it in the same condition since their father's death up to date; and that concerning the landmark- that designate the four cardinal points, those that I have seen in the examination of the land
30 are the same that have existed upon it without any variation, the one towards the north on the high pointed hill (devisadero) that rises on this side of the Tagito mine and borders on the Sierra de Buenavista; the one towards the south standing on this side of the Longorena mine on a low hill next to a cañon covered with trees; the one towards the east standing up the valley from the spring on a mesquite tree that has a cross cut in it and borders on the Sierra de las Calaberas; and the one towards the west standing at the Punta de Agua on a pointed hill (divisadero) opposite the

Sierra del Babuquivari. He said finally that that was all that he knew and was sure of on that matter; that he resides in the presidio of Tubac and is fifty-five years old. As he did not know how to write, he made a cross with the judge and assisting witnesses in default of the clerk prescribed by law.

ATANACIO OTERO.

Witness:
GERONIMO DE LA ERRAN.

Witness:
JOSE GRIJALVA.

At the same place, and on said day, month and year, I, the acting

[SEAL.]

judge, summoned Jose Sanchez who, having been sworn in the ordinary way, and having promised to speak the truth in his testimony on the aforesaid subject, said that the ranch called Aribac has been settled and occupied from the year 1812 up to the present time by the deceased Don Agustin Ortiz and his successors, Don Tomas and Don Ygnacio Ortiz, and that the landmarks that designate the boundaries that have just been mentioned, on the four cardinal points, and that have since that time designated the limit of their measurements are the same and without variation. This he answered, stating that he was fifty-seven years old and a citizen of Tubac, and as he did not know how to write, he made a cross.

I, the acting judge, signed the same with the assisting wit-
31 nesses in default of the clerk prescribed by law.

ATANACIO OTERO.

Witness:
GERONIMO DE LA ERRAN.

Witness:
JOSE GRIJALVA.

At said place, and on said day, month and year, I, the abovementioned judge, summoned citizen Bernardino Madrid, who, after having been sworn as is customary and having promised to speak the truth regarding all that he was questioned about as to the previous matter, said that the ranch called Aribac has been settled and occupied since the year 1812 up to the present time by the deceased Don Agustin Ortiz and his successors, Don Tomas and Don Ygnacio Ortiz, and that the landmarks that designate the boundaries just mentioned, on the four cardinal points, are the same and without any variation which since that time have designated the limits of their measurements. This he answered, stating that he was fifty years old and a citizen of Tubac, and not knowing how to write, he made a cross. I, the acting judge, signed said testimony

with the assisting witnesses in default of the clerk prescribed by law.

ATANACIO OTERO.

Witness:
GERONIMO DE LA ERRAN.

Witness:
JOSE GRIJALVA.

The testimony being concluded, it was given in the original to Don Tomas and Don Ygnacio Ortiz, for their benefit and as they desired it; and in order that it may remain as an evidence, I write it and sign it at the Aribac ranch on the 3d of June, 1833, with my assisting witnesses in default of the clerk prescribed by law.

ATANACIO OTERO.

Witness:
GERONIMO DE LA ERRAN.

Witness:
JOSE GRIJALVA.

To the treasurer general of the State:

Ygnacio Elias Gonsales, of this city, in the name of and as attorney for Don Tomas and Don Ygnacio Ortiz, states that he has the honor of inclosing you the documents by which they show their right of property to two sitios of land for raising cattle which in the year 1812 were sold at public auction to their deceased
32 father, Don Agustin Ortiz, from whom they inherited the same, which land is situated in the place called Aribac, and that the price at which it was sold and other imposts thereon have been paid. The interested parties have not up to the present time

[SEAL.]

obtained the grant the original expediente containing the measurements having perhaps been lost. I ask and entreat your honor, in the name of my clients, that, as prescribed by article 27 of law No. 30, enacted on the 20th of May, 1825, you have the condescension to order what is proper and right, and that the corresponding grant be issued so that they can at all times hold their property. I swear that I act without malice and to all that is necessary, etc.

Arizpe, June 18, 1833.

YGNACIO ELIAS GONSALES.

ARIZPE, *June* 21, 1833.

The above has been presented. In compliance with article 28 of law No. 30 enacted on the 20th of May, 1825, I forwarded it to the government that it may be decided upon as is deemed proper. The

treasurer general of Sonora so ordered and signed it with the assisting witnesses prescribed by law.

MENDOZA.

Witness:
RAMON DE LA FUENTE.

Witness:
BARTOLO MIRANDA.

Treasurer general of the State of Sonora.

MOST EXCELLENT SIR: The citizen Captain Ygnacio Elias Gonsales has applied to this office in the name of the citizens Tomas and Ygnacio Ortiz, showing the documents which I have the honor of forwarding to Your Excellency. By said documents the interested parties show that in the year 1812 two sitios of land for raising cattle were surveyed and sold at auction to their deceased father, Don Agustin Ortiz, which land is situated in the place called Aribac in the jurisdiction of Pimeria Alta; that since that time the land has been occupied without any interruption; that there ex-
33 ist today the landmarks placed at that time, and that all dues are paid to the public treasury. Therefore their attorney begs that the corresponding grant be issued, as they have complied in time with article 27 of law No. 30, issued on the 20th of May, 1825. As in compliance with article 28 of the same law, I forward Your Excellency the above-mentioned documents, permit me to state that in my opinion the latter are legal and sufficient, and that there is no objection that should prevent the interested parties from obtaining the grant. Your Excellency will, however, do what is most proper.

God and liberty.
Arizpe, June 21, 1833.

JOSE MARIA MENDOZA.

To the governor of the State:

A copy.
Arizpe, June 21, 1833.

MENDOZA.

No. 940.

Whereas, the possessory right of the citizens Tomas and Ygnacio Ortiz has been legally proved, and the landmarks and boundaries of the two sitios that were registered and surveyed in the year 1812 at the place called Aribac still exist and have been recognized, and the principal value of the land has been paid to the public treasury, as is shown by the documents exhibited by their attorney, Captain Ygnacio Elias Gonsales, which documents I return to your honor

[SEAL.]

for the required purposes, the treasury shall therefore order the grant to be issued in favor of the interested parties who demand it,

in accordance with the law. I communicate the same to your honor as an answer to your esteemed note dated yesterday, 21st instant.

God and liberty.

Arizpe, June 22, 1833.

JOSE LUCAS PICO.
JOSE MARIA FELIX,
Second Clerk.

To the treasurer general of the State.

ARIZPE, *June* 24, 1833.

The above has been received, and in due compliance with the preceding supreme resolution let the grant be issued for two
34 sitios of land for raising cattle which comprise the place called Aribac, situated in the jurisdiction of Pimeria, Alta, in favor of the citizens Tomas and Ygnacio Ortiz, notifying their attorney to pay into the treasury the value of the title, in conformity with the laws. The treasurer general of the State of Sonora so decreed and signed the same with assisting witnesses in the ordinary form.

JOSE MARIA MENDOZA.

Witness:
RAMON DE LA FUENTE.

Witness:
BARTOLO MIRANDA.

In these terms this expediente was completed with all the requisites and formalities established by law, and it remains in the archives of this office as a perpetual record.

Wherefore, using the power which the laws concede to me, I do hereby, and in the name of the sovereign State of Sonora, issue in legal form a grant of two sitios of land for raising cattle and horses, which comprise the place called Aribac, in favor of their possessors, Don Tomas and Don Ygnacio Ortiz, citizens of Tubac, upon whom I confer, give and adjudge said land as a sale, with all the qualities, firmness and stability prescribed by the laws, for themselves, their children, heirs and successors, with all its rights, uses, customs, servitudes, timbers, forests, pastures, waters, springs, watering places, and all its other rights; on the positive and definite condition that they are to keep said sitios settled

[SEAL.]

and occupied, without their being deserted for any length of time, and warning them, moreover, that if their total abandonment should take place during three consecutive years, and some person should denounce them, they will, in such case, and after an examination of the fact, be declared public land and sold again to the highest bidder, except in those cases, however, as is just, in which the abandonment

may take place owing to notorious invasions of the enemy,
35 and only during such periods. Said Don Tomas and Don Ygnacio Ortiz, their heirs and successors, are further and strictly

[SEAL.]

advised that they are to keep themselves within the limits of the two sitios, their appurtenances, limits and boundaries individually established in the foregoing expediente, and to observe and exactly comply with article 30, of law No. 30, enacted on the 20th of May, 1825, which law binds them to keep landmarks of stone and lime on their boundaries under penalty of $25. This fine shall be exacted from them by the proper judge and turned into the public funds, should the law be violated, in which case said landmarks shall be built at the expense of the interested parties. And for the sake of the good and prompt administration and the fulfilment of the laws on the subject, I command the present and future judges

[SEAL.]

and local authorities of the district of this capital not to allow said interested parties or their successors to be in any way molested or disturbed in the free use, exercise, property, dominion and possession of the said two sitios of land which comprise the place called Aribac. On the contrary, they shall zealous- and constantly and with the greatest vigilance and activity see that they are protected and always kept in the quiet and peaceable possession of what they have lawfully acquired, so that in this way they may freely sell, change, exchange, donate, convey, cede and alienate said land as they may please and determine and as absolute owners and proprietors thereof in fee. With this understanding I issue this formal grant in favor of Don Tomas and Ygnacio Ortiz, their children,
heirs and successors, giving it to them for their own safety,
36 after being duly recorded in the proper book. Issued in the capital of Arizpe on the 2d of July, 1833. Authorized and signed by me and sealed with the seal of this office by and before the undersigned witnesses who assist me in default of the clerk prescribed by law.

JOSE MARIA MENDOZA.

Witness:
LUIS CARRANCO.

Witness:
BARTOLO MIRANDA.

[SEAL.]

This title is recorded on page 15 of the proper book which exists in this treasury general.

[SEAL.]

Jose Justo Milla provisional treasurer of the State of Sonora. I certify that on page 45 of the manual book of the present year the following entry is found:

July 12.—Credited to land grants thirty dollars, paid by the citizen Ygnacio Elias Gonsales as attorney for the citizens Tomas and Ygnacio Ortiz, as the value of a land title lawfully issued on the second of July of the present year by this general office in favor of the interested parties for two sitios of land for raising cattle which comprise the place named Aribac in the jurisdiction of Pimeria Alta, and of this payment the proper certificate was issued.

$30.

And that it may stand as a proof wherever it may be necessary, I issue the present at Arizpe on the 12th of July, 1833.

JOSE JUSTO MILLA.

Filed in the office of the clerk, court of private land claims, Jan. 16, 1894.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

37 OFFICE OF SURVEYOR GENERAL,
TUCSON, ARIZONA, *January* 11, 1894.

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of on file in this office.

[Seal U. S. Surveyor General's Office, District of Arizona.]

LEVI H. MANNING,
U. S. Surveyor General, District of Arizona.

PLAINTIFF'S EXHIBIT 1.

En 11 de Julio se entregó á Don Luis Yberri el titulo de merced espidido en 28 de Diciembre de 1832 de tres citios de tierra para cria de ganado mayor y Caballada que comprende el puesto nombrado Huepare cito en jurisdiccion del pueblo de Santa Maria de Baceraca á favor del ciudadano José Rodriguez de aquella vecindad.

MILLA.

En 12. de Julio se entrego al Capitan Dn. Ygnacio Elias Gonzales, el titulo de merced espedido en 2. de Julio del coriente año, de dos sitios de tierra para cria de ganado mayor y caballada, que comprende el puesto nombrado Aribac, sito en jurisdiccion de la pimeria alta, á favor de los ciudadanos Tomas é Ygnacio Ortiz vecinos del presidio de Tubac.

MILLA.

En 20. de Julio se espidio titulo de merced de un sitio menos cuatro cabellerias de tierra para cria de ganado mayor comprendido en en puesto nombrado San Vicente Ferrer en jurisdiccion de la ciudad de Alamoz á favor del Ciudadano Ygnacio Almada de aquella vecindad.

MILLA.

(C # 7, F 6.) Filed in the office of the clerk, court of private land claims, Jan. 16, 1894.

JAS. H. REEDER, *Clerk*,
By —— ——, *Deputy*.

[Endorsed:] No. 7, F 6. In the court of private land claims, Arizona district. The Arivaca Land and Cattle Company *vs.* The United States *et al.* Certified copy of entry in Book of Toma de Razon. Filed Jan. 16, 1894. James H. Reeder, clerk, by R. L. Long, dep. cl'k. Heney and Ford, attorneys for Arivaca Land and Cattle Company.

38 PLAINTIFF'S EXHIBIT 2.

In the United States Court of Private Land Claims.

ARIVACA LAND AND CATTLE COMPANY
vs.
THE UNITED STATES OF AMERICA ET AL.

Translation of Entry in Book of Toma de Razon in Office of the Treasurer General of the State of Sonora, at Hermosillo, Sonora, Mexico.

"On the 12th of July (1833) there was issued to Captain D'n Ygnacio Gonzales the title granted on the 2d of July, of the corresponding year, to two sitios of land for raising cattle and horses, which comprise the place named Aribac, situated in the jurisdiction of Pimeria Alta, in favor of the citizens Tomas and Ygnacio Ortiz, residents of the presidio of Tubac.

MILLA."

(C # 7, F 7.) Filed in the office of the clerk, court of private land claims, Jan. 16, 1894.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

39 (PLAINTIFF'S EXHIBIT 3.)

In the Court of Private Land Claims.

ARIVACA LAND AND CATTLE COMPANY
vs.
THE UNITED STATES ET AL. } No. 7. Aribac Grant.

List of Deeds.

December 26, 1856.—Ygnacio Ortiz to S. P. Heintzelman, president of the Sonora Exploring and Mining Company, and his successors, in trust for the stockholders of said company; acknowledged and recorded in office of the recorder of Pima county, Arizona Territory, in old Book 1, pages 14, 15, and 16.

June 7, 1856.—Tomas Ortiz to Ygnacio Ortiz and instrument of April 21, 1857, confirming above instrument; recorded in office of recorder of Pima county in old Book 1, pages 17, 18, and 19.

August 13, 1863.—S. P. Heintzelman and the Sonora Exploring and Mining Company to the Arizona Mining Company; acknowledged and recorded in office of recorder of Pima county in Book No. 1 of Miscellaneous Records, pages 538, 539, and 540.

January 3, 1870.—Arizona Mining Company to Charles D. Poston; acknowledged and recorded in office of recorder — Pima county, Arizona Territory, Book No. 1 of Real Estate, page 558.

David Crawford and Herzog A. Johnson to C. D. Poston; recorded in same office, Book of Real Estate Records, page 561.

February 25, 1882.—C. D. Poston to Charles Silent, conveying five acres of the Aribac tract, embracing the Consolidated Arizona Gold and Silver Mining Company; recorded in same office in Book of Deeds No. 11, page 127.

February 16, 1882.—C. D. Poston to B. M. Jacobs, conveying five acres in a square around the smokestack of the Deere and Townsend mill in the Aribac grant; recorded Book of Deeds No. 11, page 134.

40 September 15, 1882.—C. D. Poston to John S. Carr, conveying one lot 25 feet front by one hundred feet deep in the town of Arivaca and Aribac grant; recorded Book 11 Deeds of Real Estate, page 708.

November 20, 1882.—C. D. Poston to Thomas Fitch, conveying five acres of land in a square of six hundred and sixty feet on each side, enclosing the Aribac mill in Aribac grant; recorded Book 11, page 734.

November 21, 1882.—C. D. Poston and Santiago Ainsa to the Aribac Land and Cattle Company, conveying all their right, title, and interest in said grant; recorded Book 11, page 731.

June 28, 1883.—C. D. Poston to the Arivaca Land and Cattle Company, conveying all his right, title, and interest in said grant and confirming deed last above mentioned; recorded Book of Deeds No. 8, pages 649.

Ygnacio Ortiz died leaving surviving him one son and three daughters, viz., Ygnacio Ortiz, Mariana Ortiz, Ana Joaquina Ortiz, and Anita Ortiz.

Ygnacio Ortiz (son of Ygnacio Ortiz, the grantee) to Santiago Ainsa, conveying two-thirds of his interest in the Aribac grant; recorded Book 11 of Real Estate, pages 172, 173, and 174.

May 1, 1881.—Joaquina Ortiz de Yancy (daughter of Ygnacio Ortiz, the grantee) to Santiago Ainsa, conveying two-thirds of her interest in said grant; recorded Book 11, pages 179, 180, and 181.

Anita Ortiz, now sister Teresa (daughter of Ygnacio Ortiz, the grantee), to Santiago Ainsa, conveying all her right, title, and interest in said grant; recorded Book 11, pages 168, 169, and 170.

February 7, 1881.—Mariana Ortiz (daughter of Ygnacio Ortiz, the grantee) to Jennie Ainsa, the wife of Santiago Ainsa, conveying two-thirds of her undivided interest in said grant; recorded Book 11, page 177.

41 January 26, 1883.—Decree rendered in the district court of Pima county, Arizona Territory, in a suit brought by Ygnacio Ortiz, Joaquina Ortiz de Yancy, and Mariano Ortiz (the three children of Ygnacio Ortiz, the grantee), against C. D. Poston *et al.*, to quiet their title to this grant. The case was tried, and a decree was rendered in Poston's favor, decreeing that said plaintiffs

had no title nor interest in the land, and that Poston's title was good.

Tomas Ortiz died, leaving the following-named sons and daughters: Rosa Ortiz, Jesus Maria Ortiz, Dolores Ortiz, Joaquina Ortiz, Tomas Ortiz, Ygnacio Ortiz, Serafina Ortiz, Magdalena Ortiz, Carmelita Ortiz.

Of these the following-named died without issue: Joaquina Ortiz, Ygnacio Ortiz, Magdalena Ortiz, Tomas Ortiz, Carmelita Ortiz.

December 11, 1880.—Carmena Ortiz, grand-daughter of Tomas Ortiz (the grantee), to Santiago Ainsa, conveying all of her right, title, and interest in the Arivaca grant; proved and recorded in Book 11, pages 303 and 304.

June 3, 1881.—Rosa Ortiz de Carrillo and Josefa Ortiz de Massalita, grand-daughters of Tomas Ortiz, the grantee, to Santiago Ainsa, conveying all their right, title, and interest in the Arivaca grant. Acknowledged and recorded Book 11, pages 175 and 176.

Leora Ortiz, sister of Ygnacio and Tomas Ortiz, married a Salazar, and died, leaving as her heirs the following-named persons: Ana Salazar, Louisa Salazar, Rafael Salazar, and Romana Salazar.

Ana Salazar married Redonda; Romana Salazar married Ortiz.

September 24, 1877.—Ana Salazar de Redondo to Santiago Ainsa; acknowledged and recorded in Book 4, pages 187, 188, and 189.

September 17, 1877.—Rafael Salazar, Louisa Salazar, and Romana Salazar de Ortiz (the other three heirs of Leora Ortiz de Salazar) to Santiago Ainsa, conveying all their interests in the Aribac grant; recorded, Book 4, pages 185, 186, and 187.

42 June 2, 1884.—Santiago Ainsa and wife to Arivaca Land and Cattle Company; acknowledged and recorded in office of recorder of deeds for Pima county, Arizona Territory, in Book 12, Deeds of Real Estate, pages 322, 323, and 324.

November 21, 1882.—Pedro Aguirre to the Arivaca Land and Cattle Company; acknowledged and recorded in Book 12, Deeds of Real Estate. pages 198 and 199.

March 8, 1884.—Thomas Fitch to the Arivaca Land and Cattle Company; recorded, Book 12, Deeds of Real Estate, pages 199, 200, and 201.

November 20, 1882.—Santiago Ainsa to Charles Silent; acknowledged and recorded Book 11, Deeds of Real Estate, pages 733 and 734.

HENEY & FORD,
Attorneys for Arivaca Land and Cattle Company.

Filed in the office of the clerk, court of private land claims, March 18, 1895.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

43 PLAINTIFF'S EXHIBIT 4.

(MAP.)

(Here follows map marked page 43.)

44 It is stipulated that the map of the Aribac (or Arivaca) private land claim, surveyed by Y. Bonillas, March, 1894, filed in this cause March 18, 1895, and offered in evidence by plaintiff on the trial of the case, is the map made by said Ygnacio Bonillas and correctly represents the survey made by him of said grant, as testified to by him.

ROCHESTER FORD,
Attorney for Plaintiffs.
MATT. G. REYNOLDS,
U. S. Attorney.

Endorsed: No. 7, F No. 12. Stipulation. Filed in the office of the clerk, court of private land claims, Mar. 20, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy.

45 United States Court of Private Land Claims.

THE ARIVACA LAND AND CATTLE COMPANY
vs.
THE UNITED STATES. } No. 7. Aribac Grant.

It is hereby stipulated that plaintiff is the grantee of and successor in interest to the original grantee under the grant "Aribac" claimed by plaintiff, and that the deeds and conveyances by which plaintiff deraigns title need not be copied in the transcript of this case if the same should be by either party appealed.

It is further stipulated that the catalogue of expedientes of lands of the States of Sonora and Sinoloa, which expedientes exist in the archives of the treasurer general of the State of Sonora, which catalogue was printed by the State of Sonora, at Hermosillo, in 1889, contains accurate statements, so far as they go, as to the facts stated in such statements of the contents of such expedientes, and it is further stipulated and agreed that the following statements concerning the following-named expedientes, which statements are taken from said catalogue, are offered in this case by plaintiff and shall be included in the transcript of this case, if such case should be appealed, as part of the evidence of plaintiff.

MATT. G. REYNOLDS,
United States Attorney.
HENEY & FORD,
Attorneys for Plaintiff.

Tucson, Arizona, April 5, 1895.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

46 *Summary or Classification of the Expedientes Existing at Hermosillo, Sonora, Mexico, Prepared by Rochester Ford from the Official Catalogue Issued by the State of Sonora of Such Expedientes.*

Those marked with a star (*) are embraced within the notes or report of Ignacio Bonillas, Esq., which was offered in evidence.

The pages given are those of the official catalogue.

Grants Instituted Prior to the Independence, Carried on, Confirmed, and Final Title Thereon Issued by Intendentes.

* Cuchuta. Page 37. Title issued in 1823.

* Nuestra Señora de los Dolores. Page 70. Registered in 1778; title issued in 1824.

Potrero. Page 75. Denounced in 1817; confirmed September 5, 1822.

* San Elisario (á) El Bamuco. Page 118. Title issued November 12, 1824.

Grants Instituted Prior to the Independence, Carried on under Intendentes, Confirmed, and Final Title Thereon Issued by Commissaries General in the Name of the Mexican Nation.

* Alamo de Sevilla. Page 8. Registered in 1821; title issued in 1825.

* Cieneguita. Page 27. Adjudicated in 1825.

* Cuchilla del Burro. Page 28. Registered in 1817; adjudicated in 1824.

* Chupisonora, Taray, Punta del agua y Veranito. Page 33. Title issued in 1825.

* Encinal. Page 43. Denounced in 1817; title issued November 12, 1824.

* Nuestra Sra. de los Dolores de Cobayma. Page 70. Title issued in 1825.

Ntra. Sra. del Carmen. Page 70. Registered in 1820; title issued in 1824.

* Pilares. Page 87. Registered in 1821; title issued in 1824.

* San Juan del Carrizo. Page 107. Denounced in 1818; title issued January 28, 1825.

* San José de la Noria. Page 119. Registered in 1812; title issued in 1824.

* San Jorge de Baborocagui. Page 124. Registered in 1821; title issued in 1825.

47 * San José de Cagüinagua. Page 124. Registered in 1795; title issued in 1825.

* San José de Tutugueche. Page 125. Registered in 1813; title issued in 1824.

* San Rafael de la Zanja. Page 141. Registered in 1821; title issued in 1825.

* San Juan Bautista de Cochorime. Page 133. Adjudicated in 1824.

S. José de Sonoyta. Page 142. Title issued in 1825.

* Tres Marias. Page 147. Registered in 1820; title adjudicated in 1824.

Grants Instituted Prior to the Independence, Confirmed, and Final Title Thereon Issued by State Authorities.

Animas. Page 4. Registered in 1814; title delivered in 1832.

Agua de las Mesteñas. Page 10. Registered in 1788; title delivered in 1835.

Chanate y Bamori. Page 26. Registered in 1822; title issued in 1833.

Carrizal y San Diego. Page 34. Registered in 1800; title issued in 1834.

Cuchuberachi. Page 38. Denounced in 1822; title issued in 1834.

Iucuribampo. Page 51. Registered in 1810; adjudicated in 1826.

Lo de Rodriquez. Page 55. Registered in 1801; title issued in 1834.

Nuestra Señora de la Asunción del Taray. Page 68. Registered in 1805; title issued in 1833.

Ntra. Sra. del Refugio (á) Los Yaquis. Page 70. Registered in 1820; adjudicated in 1834.

Palos Blancos. Page 77. Registered in 1805; title issued in 1833.

Potrerillo. Page 78. Registered in 1813; title issued in 1850.

Palmar. Page 82. Registered in 1781; title issued 1848.

Pilares (á) Rancho viejo. Page 82. Registered in 1805; title issued in 1850.

Piedras verdes. Page 86. Registered in 1818; title issued in 1834.

San José del Tabelo. Page 96. Registered 1766; title issued in 1833.

Saguaribo. Page 103. Registered in 1818; adjudicated in 1826.

San Antonio de la Cañada. Page 104. Registered in 1813; adjudicated in 1832.

Santa Rosa. Page 105. Registered in 1814; adjudicated in 1832.

48 Subiate. Page 113. Denounced in 1816; title issued May 27, 1833.

San Antonio (á) Aguage. Page 118. Registered in 1821 (month not given); adjudicated in 1833.

* San Ignacio de la Canoa. Page 121. Registered in 1820; adjudicated in 1849.

San José del Palmarito. Page 122. Registered in 1805; title issued in 1835.

San Antonio de las Animas. Page 124. Registered in 1813; title issued in 1833.

S. José de Teopari. Page 325. Registered in 1813; title issued in 1834.

S. Juan de los Lagos (á) El Desmonte. Page 125. Registered in 1812; title issued in 1834.

S. Felipe y Arroyo del Espíritu Santo. Page 135. Registered in 1812; title issued in 1835.

San José de Toicerovavi. Page 145. Registered in 1817; title issued in 1833.

Grants Instituted Prior to Independence, Confirmed, and Final Title Issued Thereon by the Mexican Republic in the Time of the Departments.

Agiabampo y Carazeri. Page 5. Begun in 1805; title delivered in 1841.

Alamo, Sierra de Jarodache y San Juan. Page 8. Registered in 1802; title delivered in 1837.

Bacatete. Page 15. Begun in 1812; adjudicated in 1843.

Carrizal de Tena. Page 25. Denounced in 1819; title issued in 1837.

Chuculisani y Lagunas Prietas. Page 29. Registered in 1805; title issued in 1836.

Cervantes. Page 30. Registered in 1813; title issued in 1838.

Cerrito de la Flojera. Page 34. Registered in 1819; title issued in 1837.

Guateco y Bojute. Page 46. Registered in 1803; title issued in 1836.

Lajitas y Palos Blancos. Page 57. Denounced in 1817; title issued in 1838.

Llano Grande. Page 58. Registered in 1821 (month not given); adjudicated in 1843.

Llano de la Cabeza. Page 59. Denounced in 1819; title issued in 1838.

Macopaco. Page 61. Registered in 1818; title issued in 1842.

Pozito y punta de Agua. Page 76. Registered in 1821 (month not given); adjudicated in 1837.

Plomosas. Page 77. Surveyed in 1798; title issued in 1836.

49 Rodeito y Real viejo. Page 90. Denounced in 1816; title issued May 2, 1837.

San José de Gracia. Page 107. Denounced in 1814; title issued October 27, 1837.

San José de la Nopalera. Page 107. Denounced in 1816; title issued in 1839.

San Juan. Page 108. Denounced in 1817; title issued November 28, 1836.

Sn. Blas y Sn. José de Tosimurito. Page 108. Registered in 1815; title issued in 1837.

San José (á) el Potrero. Page 109. Registered in 1817; title issued in 1837.

San Nicolas. Page 109. Registered in 1814; title issued in 1837.

San Pedro. Page 123. Registered in 1807; title issued in 1839.
San Rafael de la Noria. Page 126. Registered in 1813; title issued in 1837.

Titles Issued in 1822.

San Clemente de Terape. Page 118.

Titles Issued in 1823.

Calabazas. Page 27.

Titles Issued in 1824 (*in Addition to Those Appearing Elsewhere in This Summary*).

Ocuca. Page 73.
* Parra. Page 86. Denounced in 1814; title issued July 6, 1824.
Sanjones. Page 117. Registered in 1816; adjudicated in 1824.
* San Antonio de la Ciénega y la Mora. Page 118.
San José del Cajón. Page 119. Adjudicated in 1824.
* San Rafael. Page 120. Registered in 1822; adjudicated in 1824.
San Ignacio (á) Las Cuervas. Page 121.
San José del Ranchito. Page 125. Registered in 1807; title issued in 1824.

50 *Grants Where Petitions Were Addressed to the Commissary General in the First Instance and Titles Were Issued by Him.*

* Cobachi. Page 41. Registered and adjudicated in 1825.
* San Antonio de Pádua (á) El Poso de Crisanto. Page 105. Denounced in 1825; title issued August 27, 1825.

Grants Instituted After the Independence, and Before 1825, *Before Intendentes, Subdelegates, and Others, Carried on, Confirmed, and Final Title Thereon Issued by the Commissary General in the Name of the Mexican Republic.*

* Batana. Page 15. Registered in 1822; title issued in 1825.
* Baviso. Page 15. Registered in 1821; title issued in 1824.
* Corideguachi. Page 27. Registered in 1822; title issued in 1825.
* Higuera. Page 48. Registered in 1821; adjudicated in 1825.
* Merced de las Flores. Page 61. Title issued in 1824.
* Potrero. Page 76. Registered in 1822; adjudicated in 1825.
* Padercitas. Page 76. Registered in 1822; adjudicated in 1824.
Palmillas. Page 76. Adjudicated in 1825.
* San José del Cabrizo. Page 105. Registered in 1823; adjudicated in 1825.
* San Antonio del Alamito. Page 118. Registered in 1823; adjudicated in 1824.
San Felipe de Toyvapa. Page 119. Registered in 1823; adjudicated in 1825.

*San Francisco Javier (á) La Palma. Page 119. Adjudicated in 1824.

*S. José del Potrero. Page 119. Registered in 1822; adjudicated in 1825.

*San Juan Nepomuceno (á) El Corral de Arvizu. Page 120. Title issued in 1824.

San Juan Nepomuceno (á) La Paloma y Aguila. Page 120. Registered in 1823; title adjudicated in 1825.

San Rafael de Juriquipa. Page 120. Registered in 1822; adjudicated in 1825.

*Santa Ana. Page 120. Registered in 1822; adjudicated in 1825.

Sn. José de Nator y S. Ignacio de Loyola. Page 131. Registered in 1822; title issued in 1825.

51 *Tebisco. Page 147. Registered in 1822; adjudicated in 1824.

*Viejo (á) De lo de Salvador. Page 155. Registered in 1822; adjudicated in 1825.

Grants Instituted, After the Independence and Before 1825, *Before Intendentes, Subdelegates, and Others, Carried on, Confirmed, and Final Title Thereon Issued by the Treasurer General of the State of Sonora.*

Animas (á) Los Chinos. Page 4. Registered in 1822; adjudicated in 1831.

Corral viejo. Page 27. Registered in 1822; adjudicated in 1833.

Ciénega. Page 27. Registered in 1822; title issued in 1834.

*San Miguel de la Huerta. Page 96. Registered in 1824; title issued in 1333.

San Benito (á) La Palmita. Page 118. Registered in 1824; adjudicated in 1833.

San José del Chicural. Page 119. Registered in 1822; adjudicated in 1832.

Vallecitos. Page 155. Registered in 1822; title issued in 1833.

Grants Instituted, After the Independence and Before 1825, *Before Intendentes, Subdelegates, and Others, Carried on, Confirmed, and Final Title Thereon Issued by the Mexican Republic in the Time of the Departments.*

Casa Colorada. Page 27. Registered in 1822; adjudicated in 1837.

Pozo de Crisanto. Page 83. Registered in 1824; title issued in 1837.

Santa Rosa (á) La Poza. Page 120. Registered in 1824; adjudicated in 1837.

Grants Instituted Before State Officials, Carried on, Confirmed, and Final Title Thereon Issued by the Mexican Republic in the Time of the Departments.

Agua prieta, Naynadivacachi y Santa Bárbara. Page 8. Registered in 1835; title issued in 1836.

Alisos. Page 9. Registered in 1828; title issued in 1836.

Arrieros. Page 11. Registered in 1835; title issued in 1837.

52 Baviso. Page 17. Registered in 1833; title issued in 1836.

Cañada del Valle del Sonora. Page 23. Registered in 1823; title issued in 1837.

Cerro Colorado y Nacapulito. Page 34. Registered in 1834; title issued in 1836.

Cajón y Tubaco. Page 39. Registered in 1835; title issued in 1837.

Jesus Maria. Page 53. Registered in 1834; title issued in 1837.

Jusibampo. Page 54. Registered in 1834; title issued in 1838.

Llano Blanco. Page 58. Registered in 1830; title issued in 1837.

Mesa del Alamito. Page 66. Registered in 1835; title issued in 1836.

Obispo. Page 72. Registered in 1830; adjudicated in 1837.

Parida. Page 81. Registered in 1825 (month not given); title issued in 1837.

Paredones y San Juan Bautista. Page 83. Registered in 1835; title issued in 1837.

Palma. Page 83. Registered in 1835; title issued in 1837.

Potrero. Page 84. Registered in 1835; title issued in 1837.

Pozito. Page 84. Registered in 1835; title issued in 1836.

San Antonio. Page 95. Registered in 1833; title issued in 1841.

Seri. Page 103. Registered in 1826; adjudicated in 1838.

Sierra de S. José. Page 114. Registered in 1834 (month not given); title issued in 1836.

San José (á) La Angostura. Page 114. Registered in 1834; title issued in 1836.

S. Juan de Madrid. Page 115. Registered in 1830; title issued 1838.

S. José de la Mesa. Page 116. Registered in 1832; adjudicated in 1837.

Sendraditas. Page 127. Registered in 1835; title issued in 1838.

San José de los Angeles. Page 131. Registered in 1828; title issued in 1836.

Sn. Fernando de la Casita. Page 135. Registered in 1834; title issued in 1837.

San Juan Bautista de la Tierra Prieta. Page 135. Registered in 1835; title issued in 1837.

San Pedro del Almagre. Page 135. Registered in 1835; title issued in 1837.

Sovechi. Page 136. Registered in 1835; title issued in 1837.
53 Saucito. Page 139. Registered in 1834; title issued in 1837.
S. José de Taribuci. Page 139. Registered in 1834; title issued in 1837.
S. Luis (á) El Saucito (en el Picacho). Page 139. Registered in 1834; title issued in 1837.
Tienda Pintada. Page 147. Registered in 1830; adjudicated in 1837.

Grants Instituted under the Departments, Carried on, Confirmed, and Final Title Thereon Issued by the State Officials.

Batea. Page 15. Registered in 1836; title issued in 1849.
Bomi. Page 16. Denounced in 1842; title issued in 1847.
Chiltepines. Page 26. Registered in 1844; adjudicated in 1847.
Cascarita. Page 31. Registered in 1838; title issued in 1852.
Madera y Ventana. Page 65. Registered in 1843; title issued in 1850.
Pillado el Grande. Page 76. Registered in 1839; adjudicated in 1849.
Sàric. Page 117. Registered in 1839; adjudicated in 1848.
S. Antonio de Iturbide. Page 128. Denounced in 1841; title issued in 1848.
San Francisco. Page 129. Denounced in 1847; title issued in 1849.
Todos Santos (á) Los Muertos. Page 151. Registered in 1836; title issued in 1852.

Grants Issued by the State of Sonora.

These are far too numerous to set out in detail. The official catalogue shows more than 180 of such titles, issued in the various years as follows: In 1826, one; 1828, three; 1830, ten; 1831, fifteen; 1832, sixteen; 1833, forty-three; 1834, twenty-six; 1835, twenty-one; 1848, nine; 1849, five; 1850, eleven; 1851, four; 1852, sixteen.

C 7, F. Filed in the office of the clerk, court of private land claims, May 28, 1895.

JAS. H. REEDER, *Clerk*,
By —— ——, *Deputy*.

54 *Amended and Supplemental Petition.*

In the Court of Private Land Claims, Arizona District.

ARIVACA LAND AND CATTLE COMPANY
vs.
THE UNITED STATES ET AL.
} Arivaca Land Grant.

Comes now The Arivaca Land and Cattle Company, petitioner herein, and by leave of court first had and obtained files this its amendment and supplement to its petition heretofore filed, praying for the confirmation of the Arivaca land grant, and petitioner avers that prior to the treaty known as the Gads-en treaty no resurvey of said grant had ever been applied for or ordered by any one, and that neither of the grantees or their successors in interest had prior to said treaty any knowledge or notice that within the said monuments there was any excess of land over the area stated in said title papers, and petitioner avers that the grantees under said grant were, under the laws of Mexico and the State of Sonora existing at the date of said treaty, and for a long time prior thereto had been, holders in good faith of any such excess or surplus, if any such there is, and entitled to occupy and retain the same as owners, even after such overplus is shown, without other obligation than to pay for the excess according to the quality of the land and the price that governed when it was surveyed and appraised; and petitioner further avers that if this honorable court should decide that said sale, as recited in said title papers, did not, as petitioner avers it did, convey to the grantees therein all of the said tract of land to the monuments described in said title papers, without further payment therefor, he is ready and willing and now offers to pay to the United States of America any amount that may be found to be due from it for such overplus, and also the costs for ascertaining the same, as soon as the amount of the same and the sum due therefor is ascertained.

Wherefore petitioner now tenders to the United States of America and offers to deposit with the clerk of this honorable court, for the United States of America, the sum of three hundred dol-
55 lars ($800), in gold coin of the United States of America, as payment for all such overplus or surplus of said lands in said grant, according to their quality and the price which governed when it was surveyed and appraised, and the further sum of two hundred dollars ($200), in like gold coin, for the costs of ascertaining and determining the existence or non-existence of such overplus, and prays that this court order the clerk of said court to accept said sum as such tender, and, as aforesaid, offers to pay said amount or any amount which may by this honorable court be adjudged to be due for such overplus or surplus, and prays that upon said payment this honorable court decree that petitioner is entitled to and is the owner of all of said tract of land as originally surveyed, including said overplus or surplus, and that by said decree it be secured in the

ownership and possession of the whole of said tract; and petitioner prays that the validity of its said title may be inquired into and decided, and that its title to all of said lands be declared valid, and that the said grant be adjudged to be and always to have been a complete and perfect and unconditional title in fee, and that petitioner be adjudged to be the owner in fee thereof, and for such other and further relief as to the court may seem meet and proper in the premises.

ROCHESTER FORD,
Attorneys for Petitioner.

Filed in the office of the clerk, court of private land claims, Feb. 13, 1899.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

56 And be it further remembered that afterward, to wit, on the 25th day of January, A. D. 1899, the same being the 8th day of the January term, 1899, the court, sitting at Tucson, Arizona, the following order was made:

THE ARIVACA LAND AND CATTLE COMPANY
vs.
UNITED STATES ET AL. } No. 7. Aribac Grant.

It was ordered by the court that the submission of this case to the court for decision on March 20th, 1895, be, and the same is hereby, set aside.

(Minutes signed.)

JOSEPH R. REED,
Chief Justice.

And be it further remembered that afterward, to wit, on the 9th day of February, A. D. 1900, before the court, sitting at Tucson, the following proceedings were had:

THE ARIVACA LAND AND CATTLE COMPANY
vs.
UNITED STATES ET AL. } No. 7. Aribac Grant.

This cause came on for further hearing. Rochester Ford, Esq., appeared for the plaintiff and Matt. G. Reynolds, U. S. attorney, and W. H. Pope, assistant U. S. attorney, appeared for the United States.

Witnesses H. O. Flipper, Chas. Bent, J. W. Bogan, N. W. Bernard, and R. N. Leatherwood were called by the defendant-, sworn, and examined.

G. J. Roskruge was called, sworn, and examined by the plaintiff, after which the evidence closed, and the case was submitted to the court for decision.

The following is the evidence, both oral and documentary, offered at this hearing of the cause:

57 In the U. S. Court of Private Land Claims, February Term, A. D. 1900, Tucson, Arizona.

THE ARIBACA LAND AND CATTLE COMPANY, Plaintiff,
versus
UNITED STATES ET AL., Defendants. } No. 7.

On February 9th, 1900, the above-entitled case was called up for trial and the following proceedings were had therein in open court:

Appearances.—Mr. Rochester Ford appeared for the plaintiff; Mr. Matt. G. Reynolds, U. S. attorney, and Mr. William H. Pope, assistant U. S. attorney, appeared for the Government; Mr. W. H. Barnes appeared for other defendants.

Mr. POPE: We desire to present in evidence this report of Special Agents Tipton and Flipper, so far as it bears on this grant, found at page 100 of said report. (Marked Defendants' Exhibit No. 1.)

HENRY O. FLIPPER, sworn on the part of the defendants, testified, upon direct examination by Mr. Pope, as follows:

Q. State your name, residence, and profession.

A. My name is Henry O. Flipper; residence, Nogales, Arizona; civil engineer by profession. At the present I am employed as special agent for the Department of Justice, assigned for duty to the office of the U. S. attorney for the court of private land claims.

Q. Were you so employed during the — 1899?

A. I was.

Q. Are you acquainted with what is known as the Aribaca grant?

A. I am.

Q. Pending now in this court for trial?

A. I am.

Q. In that capacity did you make an examination of the Aribaca grant?

A. I did. I made an examination on the ground in November, 1899.

58 Q. Are you acquainted with the Spanish language?

A. I am.

Q. On this examination of the Aribaca grant did you have with you a copy of the Spanish grant presented in evidence by the claimants on a former trial of this case?

A. I did, and also a translation.

Q. Did you have with you any maps or plats showing former surveys of the grant?

A. I had a map of that grant made by Ignacio Bonillas; also a map made under the direction of the surveyor general of Arizona, by Mr. Roskruge, I think.

Q. Did you have Mr. Howe's map?

A. There is no Howe map, but Mr. Ouray's map.

Q. The maps you had along were filed in this cause?

A. Yes, sir; the map made by Mr. Bonillas.

Q. That was tendered in evidence in connection with his testimony in behalf of the claimants at a former trial of this grant?

A. It is the same map.

Q. Now, I will get you to state whether or not you went to the monuments named on this map of Mr. Ygnacio Bonillas, as surveyed by him March, 1894.

A. I went to the one indicated on that map as the north center monument, the east center monument, the south center monument, and the west center monument. These monuments were shown to me by Mr. Leatherwood.

Q. Do you understand he was on this survey with Mr. Bonillas?

A. He told me so.

Q. Were these monuments that he pointed out to you on your examination, as stated by him, the same monuments or not that he went to with Mr. Bonillas?

A. He told me that they were the same monuments that Mr. Bonillas went to with him.

Q. I will get you to state what, if any, marking these monuments had.

59 A. The east center monument had A. E. Cent. Mt., meaning Aribac east center monument. The south center monument had A. S. Cent. Mt., meaning Aribac south center monument. The west center monument had A. W. Cent. Mont., meaning Aribac west center monument. The north center monument had A. N. Cent. Mont., meaning Aribac north center monument. These letters in these four cases were cut in the rock.

Q. When you speak of monument, what do you mean? Describe to the court.

A. These monuments of which I speak are piles of stones—stones piled up.

Q. Now, I will get you to refer to the titulo tendered in evidence in this case, and to that portion of the titulo describing the monument on the north, and state what you found there with respect to the positions of these four monuments.

A. (Reads:) "That to the north being on a high lookout hill (devisadero), which is this side of the Tajito mine, and is bounded by the Buenavista mountains."

Q. Did you make any investigation on the ground with a view of locating that monument or find natural objects?

A. Yes, sir; I went to the monument selected by Mr. Bonillas and found that monument on a ridge northwest of the present village of Aribac.

Q. About how far northwest?

A. About two miles or two miles and a half. It is on a high ridge, the northern extremity of the Guijas mountains. This monument is a low pile of stones. There are two piles of stones, each about 18 inches high and four feet in diameter.

Q. Did you take a photograph of that monument?

A. I did.

Q. I wish you would identify that.

A. This is it (photograph marked No. 2).

Q. What is the appearance of that monument on the ground, as to being artificial or natural?

A. It is artificial. There is an outcropping from the top of the hill, and this monument is built by the side of it, and the letters A. N. Cent. Mont. are cut on the outcropping as it sets up by the side of the monument. It looks as if the stones might have been broken from this outcropping and is evidently an artificial monument.

60 Q. How far are they apart?

A. They are five or six feet apart.

Q. State if this monument conforms with the statement of the expediente.

A. The titulo says that this north monument is on a lookout hill and bounded by the Buenavista mountains. This monument is not on a lookout hill; it is on a ridge, on the north side of the Guijas mountains, and the titulo says the Buenavista mountains are on the north side. I do not think Mr. Bonillas' monument conforms to the titulo, for the reason that it is not located on a lookout hill. This range of mountains is a series of peaks, and I think that — the extreme southwestern point of this range there is a hill that stands out by itself, very high, and from the top of this hill you can overlook the whole valley.

Q. Where is that peak on this map of Mr. Bonillas?

A. The peak to which I refer is monument No. 5, now known as Telegraph hill.

Q. What is the Spanish for lookout hill?

A. Devisadero, and that means a hill from which you can look out.

Q. What is the significance of it?

A. I know that in many places they were exposed to the Indians—the mining camps were exposed to the Indians—and some remained on these high points to watch for the Indians while the others were working in the mines and fields, and from this hill a man could see the entire Aribac valley.

Q. Can you look out over the Aribac valley from Mr. Bonillas' monument?

A. No, sir; you cannot.

Q. This Tajito mine that is mentioned in the title papers, did you get any information in that locality as to the location of that mine?

A. *Yes*, sir; I asked a good many people as to where that mine was, and no one ever heard of it nor knew where it was. I traveled all over that entire range of mountains and never heard of it. There might be an old shaft or open cut or tunnel, or something of that kind.

Q. Are there any old cuts in any of the elevations there?

61 —. There are quite a number of cuts. Nearly north of the present town of Aribaca there is a mine that I was told Mr. Unthank opened about 1880. He had driven a tunnel into the foot of the hill—into this mountain. Near the top of this hill there was quite a large dump there, and from this dump four or five mezquite trees, from six to eight inches in diameter, were growing, which had grown there since this dump had been made, judging from their size. This cut is also in line with the devisadero now known as Telegraph hill—United States location monument No. 5.

Q. And the north center selected by Mr. Bonillas, where would that be with respect to that Tajito mine?

A. It would be beyond the Tajito mine; this side.

Q. This side with respect to what place?

A. To Old Aribac; the point marked as Old Aribac.

Q. The title papers say something, do they not, about the north boundary of this grant being bounded by the Buenavista mountains?

A. Yes, sir.

Q. If the grant was bounded by the Buenavista mountains, this monument of Mr. Bonillas would be outside of the grant, as shown by Mr. Bonillas' map, and the entire range, as shown by that map, would be outside?

A. Yes, sir; the greater part of the range would be outside.

Q. Are there other devisaderos in that range of mountains, except in Mr. Bonillas' survey?

A. Yes, sir; there are several. There is one marked Red Hill, and the other is called Telegraph hill. There are two or three sharp peaks that we call devisaderos.

Q. Mr. Bonillas' north center monument is, I understood you, on a large ridge?

A. Yes, sir.

Q. Now, on this devisadero that you spoke of now as Telegraph hill, is there any monument on it?

A. There is a large monument on it, United States location No. 5.

Q. Have you any personal knowledge as to when that was put there?

A. No, sir.

62 Q. Did you go to the east center monument of Mr. Bonillas' survey?

A. I did.

Q. What is the description in the title papers as to that east center monument?

—. (Reads:) "That to the east up the valley from the spring, at a mezquite tree, which has a cross, and is bounded by the Calaveras mountains."

Q. Were you able to find the Calaveras mountains?

A. I made inquiry as to where they were, and no one there knew them by that name; that range of mountains is known as the Pajarito mountains.

Q. Now, I will get you to read to the court the description in the title papers as to that east center monument again.

A. (Reads:) "That to the east up the valley from the spring, at a mezquite tree, which has a cross, and is bounded by the Calaveras mountains."

Q. Now, what do you say as to Mr. Bonillas' east center monument conforming to that description?

A. Mr. Bonillas' east center monument is on the edge of a mesa about one quarter of a mile north of the Aribac valley; it is about midway between two black-oak trees; one of these trees stands north and the other south from the monument; the north one is 18 inches

in diameter and the south one is 20. The monument is 24 inches high and 5-foot base. The title papers say this monument is up the valley from the spring. This monument is a quarter of a mile out of the valley, and north of it, and about four miles southeast from the spring. There is no mezquite tree near the monument. There are three mezquite stumps standing five or six feet high and about two hundred yards northwest from the monument. There is no cross or any mark of any kind on either of these three stumps. The center mezquite stump is 200 yards still further out of the valley than the monument is.

Q. From your knowledge of the country and the vegetation in this country, what would you say as to the growth of these oak
63 trees; how do they compare in size with the mezquite stumps?

A. They are both larger.

Q. Now, you spoke of there being a pile of stones near these oak trees. Have you a photograph of that pile of stones?

A. Yes, sir; I have two photographs, numbers 1 and 2; number 1 is a photograph of the pile of stones showing the oak tree to the north of it, and number 2 shows the pile of stones with the tree south of it. They are both marked; number 1 is marked Defendants' Exhibit No. 3, and number 2 is marked Defendants' Exhibit No. 4.

Q. This pile of stones that you discovered and photographed I will get you to describe it to the court, as to its appearance as to age or otherwise?

A. It is a monument about 2 feet high and about 5 feet in diameter at the base; it lies nearly on the surface; none of the stones are in the ground; in fact, I removed the entire monument and dug into the ground and replaced the monument. It is a modern monument.

Q. Is this the only monument in that locality?

A. No, sir; about a hundred yards south of this monument is another pile of stones on that same mesa and about the same size, and about fifty yards southwest of that still another, and another about three hundred yards from it, and about a hundred and fifty yards north of the Aribac creek is another pile of stones. On the south side of the Aribac creek, along in the southern direction, I counted thirteen piles of stones within a distance of three or four hundred yards. The most northern one of them, no doubt, was built by some surveyor to hold a flag-pole. The first large monument from the south has a big pole, 4 to six inches in diameter, placed in the ground on the west side and about 4 feet from it. There is no mark on this pole, and I do not know what it was put there for.

Q. Is there anything to indicate what these other piles of
64 stones were located for?

A. Nothing, except the most southern of the thirteen of the piles belonged to a section of the Government survey.

Q. What would you say generally about the existence of piles of stones throughout the Aribac valley or in that vicinity? Did you make any observation as to that?

A. Yes, sir. Almost every ridge has one or more piles of stones upon it, especially on the south side of the creek, and throughout those mountains there are piles of stones. You can stand on any prominent point and count a hundred monuments; they are undoubtedly monuments of mining claims.

Q. Was there anything peculiar in these piles of stones that Mr. Bonillas refers to in his survey?

A. Nothing except the fact that they have been built up, piled up, high.

Q. Piled up anciently or recently?

A. They are loose stones, and they must have been piled up recently; they would not be loose if they had been piled up any great length of time.

Q. Describe the north center monument located by Mr. Bonillas, as to its appearance and age.

A. It is on the top of a ridge where there is an outcropping of stone, there being stone all over the ridge, the entire length. All around this pile of stones there are other loose stones along on the ridge.

Q. Any appearance of age about the monument?

A. No. sir.

Q. Did you go to Mr. Bonillas' south center monument?

A. Yes, sir.

Q. I will get you to read to the court the description of the south center monument as given in the grant papers.

A. (Reads:) "That to the south this side of the Longoreña mine, on a small, low hillock (loma), near a valley full of trees."

Q. Did you make inquiry as to the Longoreña mine?

A. Yes, sir.

Q. What did you ascertain?

A. I suppose that that is the mine on the south side of the Aribac creek. I was told that that mine was located in 1877 by a
65 man named —— ——. I asked a number of people if they knew of the mine that existed in 1833, and I could not find any one who knew it until this man, —— ——, located it under that name in 1877 or 1878.

Q. The title papers says it is "on a small, low hillock (loma) near a valley full of trees." Is that a fact?

A. On the south side of the Aribac river there are lomas and on the Yellow Jacket wash; there are lomas the entire length of the valley.

Q. It says a loma near a valley full of trees.

A. Yes, sir; there are trees along this valley its entire length.

Q. Water in this valley?

A. Yes, sir; there was water in it last November, in nearly the whole valley.

Q. What other valley is there coming from the Aribac creek from the south side?

A. A valley known as the Yellow Jacket valley joins the Aribac valley near the present village of Aribac, on the south side. It is not shown on this map. There is a double valley joins the Aribac

valley, and there is a road that runs through the Yellow Jacket valley.

Q. Along the Yellow Jacket valley are there lomas and trees?

A. There are trees in the valley and lomas on both sides of it.

Q. What is the Spanish for hillock?

A. Loma.

Q. What as to piles of stones on that south side, along these washes and lomas; is there just one pile of stones that Mr. Bonillas has identified as the south center monument?

A. No, sir; there are piles of stones all along the wash; there are several piles of stones, but only one has been built up.

Q. What is the appearance of its being built up; does it appear to have been anciently built up?

A. It does not; no, sir. This monument is built of slabs, slab rocks, large slabs, and piled up on top; there is nothing whatever to indicate age.

Q. Was this slab brought there?

A. It is right there; the whole country is covered with
66 this slab rock.

Q. Did you take photographs of this south center monument?

A. Yes, sir; numbers 3 and 4.

(Marked Defendants' Photographic Exhibits 5 and 6.)

Q. On the south side of the Aribac river, between that and the Bonillas south center monument, what is the character of that country, as to being mineral or non-mineral?

A. It is non-mineral until you get to the south line of the grant.

Q. You have been in this country quite a long time?

A. I have been in here since 1885.

Q. Do you know any reason why other piles of stones are found over this country in various places?

A. In these title papers, in the certificate of payment dated in 1812, it was stated to be an abandoned mining camp.

Q. Are there any other considerations why piles of stones are found at various places over this southwestern country besides mining claims?

A. The Indians have built up piles of stones in prominent places to indicate to the coming parties the direction they were going. There are a great many such piles of stones throughout the country.

Q. Have you ever seen piles of stones in sections where no land grants and no mining camps ever had been?

A. Yes, sir; in this Pajarito range, somewhat south of this, there are large piles of stones in the passes.

Q. Did you go to the west center monument as located by Mr. Bonillas?

A. I did.

Q. What is the description in the title papers?

A. (Reads:) "And that to the west as far as the point of water on a lookout hill (devisadero) in front of the Babuquivari mountains."

Q. How is that west center monument marked?

A. A. W. Cent. Mont., meaning Aribac west center monument, and it is on a high hill on the south side of the Aribac river.
67 The monument is 3 feet high and 6 inches in diameter at the base.

Q. What was its appearance as to age?

A. It was recent. That is shown by the fact that no moss is in the letters or nothing of that kind over the cuttings.

Q. Was the lettering in Spanish or English language?

A. English.

Q. Did you go to the point of the water where it ceases to flow?

A. Yes, sir.

Q. Is it at the place where Mr. Bonillas stated it was?

A. No, sir; on November 18th, 1899, I was at the point of water. It is about a mile and a half up the creek from the place where it was marked on the map.

Q. Are there any devisaderos further up the creek than those which Mr. Bonillas selected?

A. Yes, sir; there are several of them along the north extremity of the range.

Q. You mean the range south of the Aribac river and along up to this west center monument?

A. Yes, sir.

Q. Is there anything particularly distinguishing about the devisadero Mr. Bonillas has selected different from these other devisaderos on the south boundary more than the others?

A. Nothing, except it is the farthest west, and it is more nearly by itself than any of the others.

Q. It is the most western of the devisaderos?

A. Yes, sir.

Q. But there are devisaderos along the south side of the Aribac river for some distance southeast?

A. Yes, sir.

Q. Is there any mining in that section of country?

A. Yes, sir; mining on the south side of this range of hills.

Q. What as to there being old piles of stones along on this range?

A. There are old piles of stones—landmarks—monuments.

Q. What is the elevation of that pile of stones on the devisadero Mr. Bonillas selected?

A. It is a large pile of loose stones. The entire devisadero
68 is covered with stones; plenty of stones there for any purpose, but the one selected by Mr. Bonillas has been built up.

Q. What as to its appearance in age?

A. It looks to be recent; there is a pole stuck in the monument yet.

Q. Did you take a photograph of that pile of stones?

A. Yes, sir; it is marked number 5. (Marked Defendants' Photographic Exhibit No. 7.)

Q. Who is the man in the photograph?

A. Mr. Leatherwood.

Q. The absent witness in this case?

A. Yes, sir.

Q. Taking this expediente and going on the ground, can you go on the ground and, conforming with the natural objects existing there—any natural objects—can you delineate with any degree of certainty the way in which that grant was surveyed?

A. After going over the ground thoroughly—and the description in the title papers is exceedingly indefinite—after going over the ground and with this description I am prepared to say that I cannot locate that grant absolutely, but approximately I think I can locate what I believe to be the north line and the east line and the west line. I think the east center monument is up the valley—farther up the valley than this spring—and the west center monument, probably, is the same one that Mr. Bonillas took. What is described in the title papers as the point of the water is a movable point. The point where the water stops running is farther up or down the creek, according to the season of the year. The south center monument is somewhere south of the Aribac creek; I do not know where. I think the north boundary line as described runs parallel to the general course of the valley, and the end lines would be perpendicular to that line.

Q. What is the Spanish in the title papers for the south boundary?

A. En una lomita baja.

Q. What does that mean?

A. That means a small, low hillock.

Q. Is Mr. Bonillas' south center monument on a low hillock?

A. It is not; it is on a mesa; on the southern extremity.

69 Back, south of it, there are two high peaks; two of them. This monument is not on a loma or cerro; it is on a mesa.

Q. Generally speaking, what is the character of this valley, starting with the east center monument and going to the west center monument, as identified by Mr. Bonillas, for the purpose of stock-raising?

A. I think it is good for stock, but the western end is not so level as the east. The canyon is below the present town of Aribaca.

Q. How is it as to there being grass on the western end?

A. There is grass on the hills on both sides of the creek.

Q. Suitable for stock?

A. Yes, sir.

Q. What about the east end?

A. There is also grass on the mesa part of the east end. On the south side they go up into the high hills. To the east they run to the Pajarito mountains.

Q. Now, did you make any inquiry as to the old Aribac, the place known as the oldest settlement in that tract?

A. I have. The present village of Aribaca appears to be older than the other—the place marked Old Aribac. At the present Aribaca the ruins are mere mounds of earth, which would indicate greater age.

Q. What as to the suitableness of the valley for settlements in these two places?

A. There are no agricultural lands there except very small quantity at the upper place. At the point where the two valleys come

together there is a much better place for a settlement than the point of the Old Aribaca on this map.

Cross-examination by Mr. FORD:

Q. When were you first out at this place, Mr. Flipper?
A. Last November, 1899.
Q. Ever been there before?
A. I have not; no, sir.
Q. Will you please explain fully what bearing your testimony has as to the effect that there are other piles of stones and other objects than those set out in these title papers?
70 A. My testimony had reference to the monuments described in this title paper. I did not say what bearing the other objects of the country had on the monuments. In this survey they claim to be the monuments described in this document.
Q. Please explain what bearing your testimony has that there are other monuments in other parts of the country as to the monuments set out in this title paper.
A. There are monuments in other parts of the country which have been built up in the last ten or twelve years.
Q. What as to their age and as to what they are? You say these monuments are recent and these trees of slow growth. What degree of accuracy do you want your testimony to be taken?

Objection as to that. That is a matter for the court to determine; that is a question for the court.

Q. What do you mean by recent?
A. Within the last five or six years prior to the time I saw them.
Q. What would indicate that they had been recently built?
A. They are not embedded in the ground, and no moss on the stones also. The stones indicated that they had been taken from the ground.
Q. Did you find any caves or excavations near these monuments?
A. Yes, sir; near each one of these four monuments we found these holes.
Q. Where is this Longoreña mine as compared with the Longoreña mine on this map?
A. About the same place.
Q. Where is the mine that you heard of with reference to the one that is on this map?
A. It is the same mine represented on this map, I think.
Q. There is no question, then, about this mine called the Longoreña mine at or approximately near this place?
A. Yes, sir; it has been so known since 1877 or 1879.
Q. You do not pretend to say that there was not one there before?
A. No, sir; but I could not find any information that there was.
Q. Did you find any person who had been there in 1833?
A. No, sir.
Q. It may be, then, that this was simply taken up in the old name?

71 A. It is quite possible; yes, sir.

Q. And if it is true that this was a mine known in 1833 as the Longoreña mine, then the south center monument would be as described by Mr. Bonillas, or in that vicinity—close in that vicinity—would it not, according to the title paper?

A. It would be somewhere between the Aribac and the Longoreña mine. I am unable to say whether it would be closer to the Aribac or the Longoreña.

Q. I wish you would please turn to the title paper and see what it says about that.

A. "Two sitios of land for breeding cattle, which comprise the ancient and depopulated mining town of Aribac."

Q. And you think it is either at Longoreña or Aribac?

A. One of these two places. As far as I know, it is one of these two places.

Q. Is there, at or near the south center monument as located by Mr. Bonillas, a canyon covered with trees?

A. There is a canyon covered with trees its whole length, and there is a low hill that is next to that canyon. There are low hills the entire length of the canyon, on both sides, but the one on which the monument is placed is a small mesa covered with slaty rock.

Q. Is there at this south center monument or in that immediate vicinity or near to it a mine called the Longoreña mine?

A. There is a mine which at present is called the Longoreña mine, but that Longoreña mine is on the other side of the south center monument.

Q. You do not know where the Punta de Agua is as stated to be in 1833?

A. I do not.

Q. You are not prepared to say that it was not at the point described on this map of Mr. Bonillas?

A. I am not.

Q. In effect you testified that this west center monument answers the call, did you not?

A. I think that monument would answer the call.

Q. You say this description is very indefinite?

A. Yes, sir; it is exceedingly so, compared with descriptions of lands in other titles. There is no survey. He does not give courses or distances.

72 Q. Do you remember making a statement in a report that you got up for Judge Barnes on the Calabasas grant substantially as follows: I am of the opinion that the title is genuine notwithstanding it is obscure and indefinite and defective, and I arrive at this conclusion the more readily because I know that there is about all of the titles issued by the Spanish authorities which I have examined something equally obscure, indefinite, and defective. Do you remember making that statement to Judge Barnes?

A. To the best of my recollection, I made that report.

Q. Do you know Mr. Ignacio Bonillas?

A. I do.

Q. About how long have you known him?

A. I have known him since 1886; possibly since 1885.
Q. What is his profession?
A. He is a civil engineer and surveyor.
Q. What experience, if any, has he had in his profession?

Objection to that, as we have not gone into the competency of Mr. Bonillas except so far as this case.

The COURT: We have in this and other cases passed our judgment as to Mr. Bonillas' qualifications as an engineer.

Question withdrawn.

Q. You spoke of the Tajito mine, did you not?
A. Yes, sir.
Q. I believe you testified that you could not find the mine that was known in 1833 as the Tajito mine, if it was there?
A. No, sir; I could not find any such a mine, and I could not find any one that could find a mine that might fill that description.
Q. You could not say that there were other mines at other place that might fill the same description?
A. I found nothing that would fill that description; there are old mines all through those hills.
Q. Why would not any other mine fill that description?
A. Well, there was there a dump on which were growing some mezquite trees from six to eight inches in diameter, growing
73 up through the dump on the dump, and they must have grown up there since that dump was made.
Q. Do you mean to say that this Tajito mine spoken of in 1833 could not be located any place except at this place which you describe?
A. No, sir. That place I described is on this hill marked U. S. L. No. 5, and Old Aribac is very near that location. Between the mine and these hills there are any number of other mines; so it may be covered up by them, and on the other side of the hill there might be other mines that were covered.
Q. May there not have been other mines there that could have been covered up?
A. It is possible.
Q. Is there not at or near the place described on the map as the north center monument a very prominent hill?
A. There is a high read peak—very high red peak—and on that red peak there is a monument fully as tall as I am, with a pole in it.
Q. Devisadero means a peak, does it not?
A. It means a high, pointed hill.
Q. What sort of a hill is a devisadero?
A. It is a hill, of any configuration whatever, from the summit of which the surrounding country may be seen, or a large circumference of the surrounding country may be seen.
Q. The point on this Bonillas map described as the north center monument—is there a hill from whence a large area of country around may be observed at or near that point?

A. From any point around that north center monument the Aribaca valley——

Q. I did not ask you that. I asked you whether at or near the north center monument there is a prominent hill, from whence a large area of country could be seen—observed.

A. The monument itself is on a large—on a long, large ridge running east and west——

Q. I asked you whether at or near the north center monument there was a prominent hill, from whence a large area of country could be observed.

A. The point on this map marked Red peak is the highest
74 peak in the entire range.

Q. I did not ask you about the highest peak. I asked you whether there was a prominent hill at or near the north center monument, from whence a large area of country could be observed.

A. The highest peak is marked Red peak. This ridge on which this monument stands is not larger than this——

Q. The question can be answered yes or no. The question I asked you is whether at or near the north center monument there is a prominent hill, from whence a large area of country can be observed.

A. I cannot answer that question unless you define what you mean by near. The ridge on which this monument sits runs about three miles east and west, and the ridge must be eight to twelve hundred feet above the valley. It is a big mountain itself. The nearest peak is marked on this map Red peak. That is the nearest one in any direction.

Q. How far is this monument from the Red peak?

A. A mile and a half, about.

Q. Did you find in the valley, east or a little southeast of Aribac, a spring?

A. There is a spring there; yes, sir; in the valley, about three-quarters of a mile from the river.

Q. Is that at or approximately near the point marked on the Bonillas map spring?

A. It is correctly located on this map.

Q. Following that Aribac valley from the spring, what is the topography of the country—any natural features?

A. Going up that east side, there are mesas or hills or lomas. Southeast you go up to the Pajarito mountains.

Q. At about four miles and a half, after going up the valley, is there a small range of mountains running at right angles to the course of the valley?

A. There is.

Q. What is the general formation of that range of mountains?

A. As near as I can recollect it, they are rough, large boulders in them.

75 Q. Gray, rough sandstones?

A. Yes, sir.

Q. Cut up in boulders?

A There are large boulders.

Q. What does calaveras mean?
A. It means skulls.
Q. Do these boulders suggest skulls?
A. No, sir; there is nothing about them to suggest skulls; they are very large—many of them.
Q. About half a mile from the range of mountains did you find a mezquite stump two and a half feet in diameter?
A. No, sir; I did not find any such stump. I never saw a mezquite stump in my life two and a half feet in diameter. It is remarkable if such a stump as that is there. I did see three large mezquite stumps, but not so large as that. There are three there, but considerably smaller than that.
Q. At the place described by Mr. Bonillas as the east center monument did you find there a monument that you testified about?
A. I did; yes, sir.
Q. Did you calculate the area of the Sonoita grant, as shown by the Roskruge survey, and make it out 22,925.87 acres or there-bouts?
A. My recollection is that it was twelve thousand and something.
Q. Did you make a calculation of the area of the Sonoita grant?
A. I did. I made a calculation of the area of the Sonoita grant. I do not recollect the figures, but my recollection is it was twelve thousand and something.
Q. Did you not calculate it to be that area for Mr. Reynolds, which he incorporated in his brief in the Supreme Court?
A. I have no recollection of it.
Q. Do you recollect or not that you calculated it 22,925.87 acres instead of only twelve thousand?
A. I do not; no, sir.
Q. Do you know whether those figures were put in the Government brief?
A. I do not. I did not write that brief.
Q. And you do not know whether this calculation was made?
A. No, sir; I did make a calculation, and I think it was twelve thousand acres and something.

76 Mr. POPE:

Q. Did you find the south center monument of Mr. Bonillas on a loma?
A. I did not; it is on a mesa.

CHARLES BENT, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. State your name, residence, and occupation.
A. Charles Bent; residence, Tucson; occupation, miner.
Q. Are you acquainted with the Aribaca grant?
A. I lived out there in 1874—lived out there some fifteen years.
Q. Have you ranch interests there?
A. Yes, sir.
A. At the time you went there in 1874 was any one living there?

A. There was only one person there.

Q. Did you ever hear of what is known as the Aribaca grant?

A. Not until I was there a year or two.

Q. Was there at that time any one living there grazing the grant?

A. Nobody; only this one sheep herder, and he did not claim the grant.

Q. At the time you went there did you learn as to the location of the old Aribac, the original location?

A. We generally called the old Aribac where the present town is now. That was called the old Aribac when I went there.

Q. What as to old ruins there of Aribac?

—. As far as the oldest is concerned, I do not believe there is any difference. There was more adobe houses up at the Aribaca town than there was below. There was only one old house, but I understood at that time that the old Aribac was at the place where the town is now at present.

Q. How many people live there now or were living there in 1892 or 1893?

A. A great many people come in there, off and on, in those mining camps.

Q. How many live there now?

A. Couple of hundred live there at present.

Q. But as to the number that were living there the last time you were living there, about 1891?

77 Objection as immaterial to admit evidence of that character.

Q. Since you have been there has anybody been in occupation of this grant or any part of it, claiming it as a grant?

A. None that I know of, with the exception of Poston, who would drop in there once in a while.

Q. Where does he live now?

A. In Phœnix; old Colonel Poston.

Q. At the time you went there in 1874, were there any former workings of mines in the vicinity of Aribac valley or down on south in that valley?

A. Yes, sir; the country was full of them.

Q. What as to the existence at that time of piles of stones all over the country?

A. The country was full of them, in all directions.

Q. You have been over these hills and mountains and elevations on south of the Aribac valley and all over the country?

A. In every direction.

Q. What as to the existence of piles of stones when you first went there, on these elevations?

A. There were piles of stones there at that time, but I should judge that most of them were put up there as fortifications by men working the mines and placers in that vicinity, and they would pile up big stones to get behind for protection.

Q. Has there been any piles of stones put in there since 1874 up to 1894?

A. Quite a lot of them were put there by miners; some of them were for claims, mining claims, locations.

Q. Are you acquainted with this country going north of the Aribaca river—starting with Telegraph hill and going north and northwest?

A. Telegraph hill has been named since I left there.

Q. Are you acquainted with the section of country going north of the Aribaca river, as indicated on the Bonillas map, and northwest of the Aribaca river?

A. I am acquainted north of the river.

Q. Do you know where Lookout hill or mountain is?

A. Yes, sir; the Mexicans call it Devisadero.

Q. It is a high hill, that can be observed from all directions?

78 A. Well, going north, there are several large hills which they — as lookout hills.

Q. Are you acquainted with any high hill there?

A. Well, from what I understand, I know where it is.

Q. You have ever been up on it?

A. Yes, sir.

Q. When was the first time you were up on top of it?

A. I think I went on top of it in 1875.

Q. Do you know of the existence of a monument there anywhere?

A. On that particular hill, there was a large monument there at that time.

Q. Was that before or after the location of mineral monument number 5 that is there now?

A. I do not know.

Q. All you know is that in 1875 there was a large monument there?

A. Yes, sir.

Q. You do not know whether that monument was a mineral monument?

A. No, sir.

Q. What was the appearance of this pile of stones on top of this devisadero in 1875, as to age? Did it appear to be recently constructed or to be very old?

A. Very old.

Q. Have you ever heard of a mine in that vicinity called the Berito mine while you lived there?

A. No, sir; never have.

Q. Have you heard of one called the Tajito mine?

A. I have.

Q. Did you ever hear of the Longoreña mine?

A. I have.

Q. When did you first hear of that?

A. I think that was in about 1877. I know the parties who located that mine. I believe it was located under the name of Longoreña.

Q. Did it have any name before its location?

A. Not that I know of.

Q. Did you ever know of it to be located prior to the time it was located there then?

A. Yes, sir; I had it located once.

Q. Prior to that time?

A. Yes, sir.

Q. Did you hear it called Longoreña up to the time it was first located?

A. Never, under that name; never.

79 Q. Are you acquainted with this section of country down towards the point marked on this map as the Longoreña mine?

A. Yes, sir; I am.

Q. Any valleys full of trees down in that section?

A. Yes, sir. The Frito cañon has trees and the Yellow Jacket.

Q. What as to high or low hills along these valleys?

A. There are small hills on both sides of the Frito creek, and also towards Aribac, this side of Frito. There are considerable numbers of them.

Q. Describe now these piles of stones that are out in that country now.

A. Well, as to these piles of stones, there were piles of stones there since there were mining camps.

Q. Do the Mexicans ever do any mining without putting up monuments?

A. Never; they always put up monuments.

Q. In these two valleys you refer to?

A. Yes, sir. I found piles of stones in several different places which could be for placers or mining sections.

Q. Are there mines located all over that section of the country south of the river?

A. Yes, sir; mines north and south.

Q. Inside of this grant as surveyed by Mr. Bonillas?

A. Yes, sir. You take it all th-ough, there are mines all through there. There are a great many mines there. I have got mines myself there.

Q. Did you ever hear of the — mountains out there?

A. No, sir. I do not believe I ever did. I never heard of them at all.

Q. Did Colonel Poston, whom you mentioned as having an interest in this grant, ever occupy or live over there?

A. No, sir. He would stay there probably four or five days or two or three days. He would come out there possibly and live at the hotel after 1878 or 1879—after the hotel was built.

Q. Just come over on a visit?

A. Just simply visits; that is all.

Adjourned, 2 p. m.

80 JOHN BOGAN, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. State your name, residence, and occupation.

A. John Bogan; Tucson, Arizona; assessor of the county.
Q. Are you acquainted with what is known as the Aribac country?
A. Yes, sir.
Q. And the region taken in by a survey shown you of the private land claim surveyed by Bonillas in March, 1894?
A. Yes, sir.
Q. Did you ever live in the town of Aribaca?
A. Yes, sir.
Q. How long did you live there?
A. I have lived there, off and on, since 1878.
Q. What has been your business?
A. Mining and stock-raising.
Q. In this business have you had occasion to become aquainted with the surrounding country?
A. Yes, sir; I do not suppose there is a hill, cañon, or valley in it that I have not been in.
Q. Do you know where is the old settlement town there—formerly Old Aribac?
A. The town of Aribac was the oldest settlement.
Q. The place marked on this map as Aribaca City?
A. Yes, sir.
Q. There is a settlement further up the river?
A. Yes, sir.
Q. Why have you always regarded it so? Are there more ruins there? How was it generally regarded, as to age, with the other place?
A. I should think it was considered so.
Q. What is the general reputation around there as to its age—has it always been considered the oldest?
A. Ever since I have known it, it was considered that.
Q. The place marked Old Aribac on this map of Mr. Bonillas?
A. Yes, sir.
Q. Do you know or have you ever heard of the Tajito mine?
A. No, sir; I have not.
Q. Do you know mountains, called the Buenavista mountains, north and northwest of there?
A. Yes, sir.
81 Q. Do you know or have you ever heard of a hill or devisadero northwest of this place?
A. Yes, sir; quite a number of them.
Q. Which direction are they from this Aribaca valley?
A. That would be, I should say, a little northwest.
Q. Are there many or few such elevations or devisaderos?
A. Quite a number of them; in fact, the Gijas mountains are all hills or peaks.
Q. How are they, as commanding a view of the Aribac valley, these elevations—these on the front line here?
A. All up and down the river.
Q. This range of hills shown on Mr. Bonillas' map?
A. Yes, sir.
Q. Just to the river and north of the river?

A. Yes, sir.

Q. Do you know a peak among these on which the U. S. mineral monument is situated?

A. Yes, sir; I know two of them.

Q. Do you know the peak on which U. S. location No. 5 is situated?

A. Yes, sir.

Q. How long have you known that hill?

A. I have known it since 1878.

Q. State whether or not that hill commands a view of the valley.

A. It is a quite *a* prominent peak on the front of the range of mountains; it commands a view of the whole valley, up or down; the peak is very commanding, as far as the view up and down the valley is concerned.

Q. Do you remember when U. S. mineral location No. 5 was built?

A. Yes, sir.

Q. When was it built?

A. I would not say positively; I think it was built in 1884.

Q. Do you know its size?

A. It is quite a large monument—say, ten or 12 feet base, and runs up as far as probably 4 feet high.

Q. Were you ever on the top of that hill previous to the erection of this monument?

A. Yes, sir.

Q. Do you know whether, prior to the time that this mineral monument was constricted there, there was any monument there?

A. Yes, sir.

Q. Prior to the location of this mineral monument number 5, was there an old monument there?

A. Yes, sir.

82 Q. I will get you to describe that other monument.

A. This mineral monument was built on top of the other monument. I was with the surveyor. Two mines are tied to that mineral monument. This peak was very prominent. That is why they tied these two mines to this mineral monument. The old monument was already there. That had been there, to my certain knowledge, since 1878.

Q. When you first saw it, in 1878, *was* was its appearance?

A. It was an old monument then.

Q. Now, have you ever been to the other devisaderos, or lookout hills, in this section north of the Aribac river, and indicated by Mr. Bonillas on this map?

A. Yes, sir; every point.

Q. Any old monuments on these lookout hills?

A. Yes, sir.

Q. Just mark these with pencil, please; mark these with letters.

A. (Marked A, B, and C.)

Q. Any monument on that Red hill there?

A. Yes, sir. This mountain is called Red hill.

Q. Do you know where the north monument of this grant, as located by Mr. Bonillas, is?

A. No, sir.

Q. About how far north of the river is this monument located on which you say mineral monument number 5 is situated?

A. I should say that is about three-quarters of a mile; maybe a mile.

Q. Is that called Telegraph hill?

A. Yes, sir.

Q. I believe you said you were acquainted with the country south of the Aribaca river some miles?

A. Yes, sir.

Q. Are you acquainted with what is now called the Longoreña mine?

A. Yes, sir.

Q. When did that first go by that name?

A. That was just before I went to Arizona; somewhere along in 1877—along in January, 1877.

Q. Do you know who located that mine?

A. Ben. Burgin.

Q. The title papers speak of the south boundary being this
83 side of the Longoreña mine, in a small, low hillock near a valley full of trees. Is there only one small, low hillock near a valley full of trees?

A. No, sir; there are many hills, or hillocks, you may call them.

Q. And to what extent is that valley full of trees?

A. It is a small, narrow valley running down on each side of it.

Q. How is that with respect to having trees in it?

A. There are some trees along the general course—cottonwoods.

Q. Is there running water in that valley?

A. Sometimes and sometimes there is none.

Q. What about what is known as Yellow Jacket gulch; are there trees in it also?

A. Yes, sir.

Q. Where does that Yellow Jacket gulch come into the Aribaca valley?

A. It is about, I should say, a mile from Aribac.

Q. In which direction?

A. It is south—a little bit southwest.

Q. Are there hillocks along that valley?

A. Yes, sir; the whole country there is covered with hills. You can find low hills anywhere you want to.

Q. What about piles of stones on these low hillocks on these valleys that you refer to?

A. There are numbers of them.

Q. Well, the description says that there is a pile of stones on a small, low hillock near a valley full of trees. From your knowledge of the country, does that convey to your mind any definite place where such a location can be found?

A. No, sir; it does not.

Q. Are there few or many such small, low hillocks in that vicinity that would answer that description?

A. Many.

Q. What would you say of a description which says, being on a high lookout hill, which is this side of the Tajito mine, and is bounded by the Buenavista mountains—what would you say as to that description? Does that apply to only one place or a number of places within your knowledge?

A. A number of places.

84 Q. A number of points fill that description?

A. Yes, sir.

Q. Did you ever hear of the Calaveras mountains in that country?

A. No, sir.

Q. Are they or are they not well-known mountains?

A. I never heard of them; in fact, there are no such mountains in that country.

Q. Did you know any mezquite trees up the valley at any time in the past?

A. Yes, sir; I know some.

Q. To what extent is the mezquite tree in the valley?

A. There are not a great many; they are at different places, here and there.

Q. Do you know of any mezquite tree with a cross on it?

A. No, sir.

Q. Never have known of that?

A. No, sir.

Q. Do you know where a spring is in the valley?

A. Yes, sir.

Q. From your knowledge of the country, could you take this description and find it up the valley from the spring at a mezquite tree which has a cross and is bounded by the Calaveras mountains; could you locate such a description as that?

A. No, sir.

Q. Would the fact that there was a pile of stones within a hundred yards enable you to make any such location as that?

A. No, sir.

Objection as immaterial. Sustained.

Q. What as to the presence or lack of such piles of stones in this valley above the spring—are there many or few?

A. There is a good many.

Q. When you first went there, in 1878, what as to the presence of piles of stones in those localities?

A. There were many there then.

Q. Going northwest from Aribaca, on the south side of the river, are there any lookout hills?

A. Yes, sir.

Q. I wish you would indicate on this map any lookout hills or devisaderos down there by the letters A.

A. There are many prominent peaks marked A.

Q. Between that and what is marked west center monument what as to there being devisaderos between these two points or look-out hills?

85 A. There are quite a number of prominent peaks. I should say there are at least a dozen.

Q. And in that vicinity what as to the presence of piles of stones on those peaks?

A. There are numbers of them.

Q. Since you have been living on this grant has there been any one in possession of it or any part of it claiming under the grant?

A. No, sir.

Q. Are there any parties holding patents to any portion of this grant under the public land laws?

A. Yes, sir; under the laws of the United States; homesteads.

Q. Will you name such persons as are holding portions of this grant under patents of the United States?

A. Robert Paul, C. W. and George Wright, John Moloney, Dr. Wilbur, his wife, I think; Francisco Maldonado. I cannot think of any others.

Q. Are there miners in there?

A. Yes, sir.

Q. How many?

A. There are quite a number. Most all the valley is full. Up and down the valley are claims. It is claimed from Wilbur's clear up and down.

Q. Any of it fenced?

A. Some, not a great deal.

Q. Any cultivated?

A. As far up as the spring, a great deal of it is farmed. A great deal of it is not fenced, though, above the spring.

Q. Any people making mining locations outside of the grant?

A. Yes, sir; quite a number.

Q. Any patented mines?

A. Yes, sir; several of them.

Q. What are some of them?

A. Fairview, Albert, Mentor, Queen, and the Liberty.

Cross-examination by Mr. FORD:

Q. Did you ever go to this north center monument located by Mr. Bonillas?

A. Never since he has made the survey.

Q. Have you been there?

A. Yes, sir; I have been all over it.

86 Q. Have you been at that point?

A. I should think I have.

Q. From there around northwest you can see to a great extent to the Cerro Colorado mountains?

A. Yes, sir.

Q. Over this tract to the Aribac country?

A. Yes, sir; along the north.

Q. When you go up the valley from the spring you run across a

small range of mountains, do you not, about 4 miles and a half across the valley at right angles?

A. Yes, sir.

Q. These mountains are called the Berito mountains?

A. Yes, sir.

Q. There is no chain of mountains crossing the valley until you come to them?

A. No, sir.

Q. State whether or not close to the valley, on low ground, about half a mile from the range of mountains that you spoke about, there is a large mezquite stump, and on the bank of the valley, about 150 feet from the stump, there is a large monument of loose stones. Do you know whether there is or not?

A. No, sir; I do not know. I never noticed.

Q. Do you know the Longoreña mine?

A. I do not know it. I never heard of it at all.

Mr. POPE:

Q. Looking from Mr. Bonillas' lookout point where you can see just the hills, can you see anything of the Aribaca valley north and south?

A. No, sir.

Mr. FORD:

Q. The title paper does not say that you can?

A. I do not know.

N. W. BERNARD, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. State your name, residence, and official position in connection with county.

A. N. W. Bernard; I live in Tucson; I am county supervisor.

Q. Do you know where the place Aribac is?

A. Yes, sir.

Q. Ever live there?

A. Yes, sir; I lived there from 1877 until 1897.

Q. Where is the old settlement of Aribac out there, the one that is called the old settlement, the one that is generally considered the old settlement?

A. The lower one, they call that Old Aribac. There are
87 old ruins up at Aribac, as it now seems to be older than the ones below; there are more excavations or ruins; it is hard to tell. This seemed to be quite a place at one time—quite a lot of houses. There is an old corral there also. At the lower one the settlement is now.

Q. How does that compare with the size of ruins at Aribaca, below?

A. It is larger; evidently been a larger place at one time; the ruins there appear to be older.

Q. How did that compare in 1877, when you went there?

A. The same.

Q. Where is the valley wider?
A. At upper Aribac.
Q. You say you moved there in 1877?
A. The fall of 1877; yes, sir.
Q. What has been your business?
A. Mines and cattle-raising.
Q. Have you had any occasion to become acquainted with the country surrounding Aribac?
A. Yes, sir; I run cattle all over it.
Q. Do you — where is what has been referred to as Telegraph hill?
A. Yes, sir; it is a little mountain lying out nearly north.
Q. How is it with respect to being a point from which the surrounding country can be overlooked; to what extent?
A. You can see it all up and down the Aribaca creek and over to the Cerro Colorado, and mountains 25 miles.
Q. How far is the Cerro Colorado from it?
A. Nine miles.
Q. How, with respect to the Aribac valley?
A. You can see the whole of the Aribac valley from the top of that mountains.
Q. Have you ever been to the top of it?
A. Yes, sir.
Q. Since the U. S. location monument was put there?
A. I have not been to the top since that was put there; there is one up there.
Q. But you were up there before it was put there?
A. Yes, sir.
Q. Was there any monument or pile of scattered stones up there then?
A. I believe there had been a fortification or something of that kind.
Q. What was its appearance as to being recent or otherwise?
A. There was a lot of stones all scattered around, you know; the same as any old monument would be.
88 Q. Were you there when Mr. Bonillas was out there, in 1894?
A. Yes, sir; I was living there at the time. I followed him along to some of the places.
Q. Which ones did you go to with him?
A. From what is described here as Old Aribac—I think he started from there, and the first monument he established was this south center monument, and then from there he established his next one right down on the creek, on the hill, and then from there he established this center monument up by Moloney's ranch—that is up the valley—and then I went with him to this corner monument here; then from there this one here.
Q. The west center, south center, and the east center?
A. Yes, sir.
Q. You did not go with him to the north center?
A. No, sir.

Q. Mr. Leatherwood was there with him?

A. Yes, sir.

Q. Are you acquainted with the north center monument as pointed out to you?

A. I know about where it is; yes, sir.

Q. Have you ever been up there?

A. Never been there since it was put there, but I have been all over that country; I have been to every lookout hill on the north there.

Q. What about this Telegraph hill that you described as being a lookout hill, going north from Aribaca; how does it appear as a lookout hill?

A. I never was on top of this place where this north monument is, but this Telegraph hill you can see from here; it is right in the end of the mountains; you can see it from the valley.

Q. And that Telegraph hill is marked here on this map of Mr. Bonillas' survey, made March, 1894, as U. S. location monument No. 5?

A. Yes, sir.

Q. When you went to this points with Mr. Bonillas that you have described, state whether or not you left them just as you found them.

A. We left the monuments just as we found them—piles of stone. I left them just the way I found them; I did not trouble them at all.

Q. Did anybody trouble them after Mr. Bonillas left or
89 while he was there?

A. He put the monuments up himself.

Q. Did you see him put them up?

A. Yes, sir.

Q. Have you ever heard since you have been out there of a mile called the Longoreña mine?

A. Yes, sir.

Q. When did you first hear it called by that name?

A. Since I went out there. I do not know. I could not tell when; perhaps after I had been out there some time.

Q. Do you know who first located it?

A. Ben. Burgin.

Q. Dod you hear of an old mine by the name of Longoreña?

A. No, sir. I do not know whether there was a new one or not. There are a great many more old mines around there, but the one he located he called the Longoreña mine.

Q. This is the same one Ben. Burgin located?

A. Yes, sir. Burgin located it and called it Longoreña mine. The mining records here will disclose that.

Q. Did you find any piles of stones down in that section of the country near the Longoreña mine?

A. Piles of stones; you can find them anywhere you want to.

Q. There is no trouble to point out the boundaries of this tract?

A. No, sir.

Q. Artificial piles of stones that have been carried there by the Indians or miners some time?

A. Yes, sir.

Q. Do you know of any valleys with trees south of the Aribaca river?

A. There are some running up in there where the road runs up. It is called the Oro Blanco or Yellow Jacket road. Several valleys come almost together in this road. After it gets up into the hills there is the Fruitland valley, then a little creek runs into it, and from this creek you go up to another that comes along in here. In here you find old mines, and there is another old mine here, and in this valley here there are trees there—in all, three; then another valley up this way comes in here. It is the same branch of that same valley.

Q. What as to the presence of trees along these various valleys you have described?

A. There are little, low trees along the hills or along the sides of the creeks.

Q. And as to piles of stones along these valleys?

A. As a general thing, you find them on the tops of every little high place—you find stones piled up—and in through here there is any amount of them evidently been piled up by the Indians.

Q. Ever heard of the Calaveras mountains out there?

A. Never heard of them until now—today.

Q. They are not well-known mountains, then?

A. I never heard of them out there at all; never knew there were any such mountains.

Cross-examination by Mr. FORD:

Q. You say this point called Old Aribac is so called today, is it not?

A. Yes, sir; it is called that by most people there.

Q. And these monuments that Mr. Bonillas put up—these were corner monuments, were they not?

A. He claimed them for corner monuments; that is what he claimed.

Q. Describe what monuments you went to.

A. Here; that one; the west center monument, south center monument, and the east center monument.

Q. Did you go to the southeast corner?

A. I went to the southeast corner.

Q. Mr. Bonillas put up a monument there, did he?

A. Yes, sir.

Q. And the southwest corner?

A. No, sir; I did not go *that* that corner; I went to the northwest corner.

Q. Mr. Bonillas put up a monument there?

A. Yes, sir.

Q. Do you know what longoreña means?

A. I have heard it called "long, green."

Q. That is all.

R. N. LEATHERWOOD, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

91 Q. State your name, age, and residence.

A. R. N. Leatherwood; I was born in 1844; residence—I am here in summer.

Q. Were you out with Mr. Bonillas on the survey of this Aribaca grant, now on trial, in 1894?

A. Yes, sir.

Q. Were *out* out there with Mr. Henry O. Flipper, on the investigation of this grant, last November?

A. I was.

Q. Did you point out to him the several monuments of Mr. Bonillas' survey?

A. I pointed out to him the south center monument, the west center monument, and north center monument, and the east center monument; these four.

Q. The ones that Mr. Bonillas selected as his monuments on his survey?

A. Yes, sir.

Q. Do you remember showing Mr. Bernard the north center monument of this grant?

A. I showed it to him from the valley—that is, I showed him the top that it stood on.

Q. The one that you showed him was the one that Mr. Bonillas selected on this survey?

A. Yes, sir.

No cross-examination.

Mr. POPE: That is the Government's case.

GEORGE J. ROSKRUGE, sworn on the part of the plaintiff, testified, upon direct examination by Mr. Ford, as follows:

Q. You are a surveyor, are you not?

A. Yes, sir.

Q. Been a surveyor for a great many years?

A. Yes, sir.

Q. How long have you lived in Pima county, Arizona?

A. Ever since 1874.

Q. What official positions have you held?

A. County surveyor, U. S. deputy mineral surveyor, and land surveyor for the U. S. Government, and chief clerk and draughtsman for the surveyor general, and surveyor general for Arizona.

Q. Did you ever go out to what is called the Aribac grant?

A. Yes, sir.

Q. When did you first go there?

A. I think in 1877 I passed through there, and then I went
92 back probably two or three years afterwards; I have been there several times, at the place called Old Aribac.

Q. Where is that town with reference to the present town of Aribaca?

A. Probably about a mile or a mile and a half beyond the creek, on the right-hand side.

Q. Did you ever make, on behalf of the Government, a preliminary survey of the Aribac land grant?

A. Yes, sir.

Q. About when was that?

A. I think it was in 1881.

Q. Did your preliminary survey include the Old Aribac?

A. Yes, sir.

Q. And the present town of Aribaca?

A. Yes, sir.

Q. How many leagues or acres did it contain?

A. Two leagues.

Q. Did that include the running water on the grant?

A. Yes. sir.

Q. It took in all the valley?

A. Yes, sir.

Q. Have you the field-notes or plat of the survey with you?

A. No, sir; the field-notes are in the surveyor general's office, on file; the plat of the grant was made by the draughtsmen in the surveyor general's office, from my notes.

Q. Do you know whether that is correct or not?

A. I believe it is.

Q. State how many acres the grant contains.

A. 8,680.52.

Q. Can you furnish the data by which that grant can be identified on the ground?

A. Yes, sir.

Q. Please do so.

A. The public surveys have been enclosed on this grant since it was surveyed by me in three or four different places; there — enough monuments on this grant to identify it on the ground. The initial monument of the preliminary survey is north 38 degrees 15 minutes east, between sections 3 and 34 and townships 21 and 22 N., range 10 east, in Arizona; that initial monument connects with the public surveys.

Q. From that initial monument, giving the courses and distances here on this preliminary survey, you can reproduce this survey, could you?

A. Yes, sir.

Cross-examination by Mr. POPE:

93 Q. What corner section of the public survey did you say your preliminary survey tied to?

A. The closing corner is between sections 3 and 34, townships 21 and 22 north, range 10 east.

Q. Have you ever seen the map made by Mr. Bonillas in evidence in this case, made about March, 1894?

A. No, sir; I never did.

Q. You never examined it?

A. No, sir.

Q. How far south of the present town of Aribac does your preliminary survey run?

A. About two miles.

Q. And how far is it from the present town of Aribac, on your map, to your west boundary?

A. About three miles; a little over three miles.

Q. What month and year did you survey that?

A. In February, 1881.

Q. And you run then to the end of the water, you said?

A. I commenced about a mile above the spring, east of the spring.

Q. And how far is the end of the water up the stream?

A. I took in all the water on the grant; I went a mile above the spring, beyond where the river sank.

Q. And how far beyond that?

A. Probably a mile.

Q. Do you know which boundary *us* further west, the one you place there or the one Mr. Bonillas has placed?

A. I do not know anything about Mr. Bonillas' survey.

Q. Is your plat to which you have referred correct in all respects?

A. I belie ve it to be; yes, sir.

Q. You found the places and monuments where you put them, did you?

A. Yes, sir.

Q. They are all correctly represented on your plat?

A. Yes, sir.

Q. At the present town of Aribaca, did you find any ruins?

A. I do not know of any ruins right at it; I remember there was one old house, the house Mr. Bernard afterwards lived in.

Q. When were you first there?

A. Probably in 1877 or 1878. Three or four gentlemen
94 who went there in 1877 stated that there were very old ruins there at that time, but I cannot testify to that fact; I think that they are right, but I may be mistaken. I asked Mr. —— where the Old Aribac was, and he took me down to the same place.

Q. What is the distance between Old Aribac as you established it and the present town of Aribaca?

A. It must be about a mile and a quarter or a mile and a half.

Mr. FORD:

Q. Your preliminary survey did not pretend to conform to the natural objects called for, did it?

A. No, sir.

Q. It was simply a survey to the extent of quantity, was it not?

A. I surveyed the two leagues of land. It was left a good deal to me. They wanted it for cattle-raising in that valley. I used my own judgment as to where to locate it.

Mr. POPE:

Q. Did you have the title papers with you on your preliminary survey?

A. Yes, sir; and the instructions from the surveyor general. I had a copy of what he had; it is in his report on that grant.
Q. You did not have a copy of the grant or a translation?
A. I had his instructions, and I filed the instructions with the surveyor general.
Q. You were not a cattleman, were you?
A. No, sir; never have been; no, sir.
Q. Just a surveyor?
A. Yes, sir.

I hereby certify that the above and foregoing is a full, true, and correct transcript of all the testimony taken down by me in shorthand on the trial of the above-entitled case in open court.

W. J. McPHERSON,
Official Stenographer.

[Endorsed:] Arivaca L. & Cattle Co. *vs* U. S. Testimony. Filed in the office of the clerk, court of private land claims, Mar. 30, 1900. Jas. H. Reeder, clerk, by —— ——, deputy.

95 DEFENDANTS' EXHIBIT 1.

Extract from "Official Report on the Condition of the Archives or Records of the Titles to Land Grants in Arizona, and Similar Grants in Mexico, by Special Agents Will M. Tipton and Henry O. Flipper."

Page 100.

"162. ARIBAC (Arizona)."

There is absolutely nothing in the archives concerning this grant except the entry in the book of Toma de Razon under the year 1833, on page 1 of leaf 13, as follows:

"On the 12th of July there was delivered to Captain Don Ignacio Elias Gonzalez the grant title, issued on the 2nd of July of the current year, for two sitios of land for raising cattle and horses, which is comprised in the place called Aribac, situate in the jurisdiction of the Upper Pima country, in favor of citizens Tomas and Ignacio Ortiz, residents of the presidio of Tubac.

MILLA."

Filed in the office of the clerk, court of private land claims, Feb. 9, 1900.

JAS. H. REEDER, *Clerk.*

96 DEFENDANTS' EXHIBITS.

No. 2. Photo.
" 3. "
" 4. "
" 5. "
" 6. "
" 7. "

97 And afterwards, to wit, on the following day, being the 10th day of February, A. D. 1900, the court gave its decision as follows:

THE ARIVACA LAND & CATTLE CO.
vs.
UNITED STATES ET AL. } No. 7. Aribac Grant.

This cause having come on to be heard at the present term, and having been submitted upon full legal proof and hearing, and the court, upon consideration and examination of said cause, being sufficiently advised in the premises, doth find that said petition for the confirmation of the private land claim known as and called the Aribac grant, alleged to be situate in the county of Pima, Territory of Arizona, and more particularly described in plaintiff's petition on file in this cause, has not been sustained by satisfactory proof, and that the title so asserted to that tract of land, title to which is alleged to have been issued to Tomas Ortiz and Ignacio Ortiz by Jose Maria Mendoza, treasurer general of the State of Sonora, on July 2, 1833, is of no validity, and that the grant or concession so claimed is not such an one as the United States are bound to recognize and confirm by virtue of the treaties of cession by Mexico to the United States, by the laws of nations, or by the laws and ordinances of Spain and Mexico. It is therefore ordered, adjudged, and decreed that the said claim to the said tract of land be, and the same is hereby, rejected and said petition dismissed.

This February 10, 1900.

(Signed) JOSEPH R. REED,
Chief Justice.

98 *Opinion of the Court.*

THE ARIVACA LAND AND CATTLE CO.
vs.
THE UNITED STATES.

In this case a majority of the court are of the opinion that there is such uncertainty as to the land which was intended to be granted that it is impossible now to identify it. The claim is therefore rejected on that ground.

While I agree to that view of the case, I am also of the opinion that the claim should be rejected on the further ground that the grant does not appear to have been recorded within the meaning of the treaty of 1853. It is true that an entry with reference to the grant appears in the Toma de Razon, but we held in the Cameron case that the expediente of the proceedings under which the sale and grant were made constituted the record contemplated by the treaty. In this case the "titulo" held by claimants shows that a proceeding was had in 1833 for the revalidation of a title issued in 1812, but the proper Mexican archives, viz., those at Hermosillo, Sonora, do not now contain the expediente of the proceedings, either

of 1812 or 1833, nor does it appear that either was ever in the archives.

Mr. Justice Fuller concurs in this view.

JOSEPH R. REED,
Chief Justice.

Murray, J., concurs in result, but not in views holding as to record. Sluss and Stone, JJ., dissent.

Filed in the office of the clerk, court of private land claims, Feb. 10, 1900.

JAS. H. REEDER, *Clerk*,
By —— ——, *Deputy.*

99 *Opinion of Judge Murray.*

In the U. S. Court of Private Land Claims, Tucson, Arizona, February Term, 1900.

THE ARIBACA LAND AND CATTLE COMPANY *versus* UNITED STATES. } No. 7.

I concur in the conclusion reached by the court in this cause; but, in my opinion, the grant is duly recorded in the archives of Mexico. The Toma de Razon is the proper book in which grants of land are to be recorded. The expediente or titulo which contain the various steps leading up to the issuance of the grant are never recorded. The law requires only a record of the grant to be made in the Toma de Razon. The grant is not copied in full, as is the practice in the United States, but a short entry is made showing the date of the grant, to whom granted, the number of sitios contained in the grant, the country or jurisdiction in which the land is located. There being a Toma de Razon of the grant in this cause, as required by the laws, usages, and customs of Mexico, it is duly recorded in the archives of Mexico.

(Signed) WILLIAM W. MURRAY,
Associate Justice.

Filed in the office of the clerk, court of private land claims, Feb. 10, 1900.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy.*

100 In the Court of Private Land Claims.

THE ARIVACA LAND & CATTLE CO.
vs.
THE UNITED STATES ET AL.

Dissenting Opinion.

The grant document introduced to sustain the claim in this case is a titulo or grant title, issued by Jesus Maria Mendoza, as treasurer general of Sonora, July 2d, 1833, to Tomas and Ignacio Ortiz. The power of the State of Sonora to dispose of the public lands within its limits at the time of the issuance of this titulo has been upheld by the Supreme Court in the case of Camou *vs.* The United States, 171 U. S., 277.

By law No. 30 of May 20, 1825 (see Reynolds' Compilation, 129), the State of Sonora made provision for the disposal of the public lands within its limits.

Sec. 19 provides: "The treasurer as the immediate chief of all the revenues shall make the sales and give the titles."

The titulo or grant title issued by the treasurer general was the final act of the government in the matter of the conveyance of the land, and operated as a conveyance of the title to the same effect as a patent does under the system of disposing of the public lands in the United States.

In Minter *vs.* Cremmelin, 18 Howard, 87, it was decided that "where a patent has been issued by the officer having authority to issue it, the presumption is that it is valid and passed the legal title; furthermore, it is *prima facie* evidence of itself that all the incipient steps had been regularly taken before the title was perfected by the patent."

In other words, the recitals of fact, upon which the authority to issue the document is based, are to be taken as true.

By sections 27, 28, and 31 of the law of Sonora above referred to it was provided:

"27. Those who possess sitios and who, although they have them registered and surveyed, have not obtained the title, shall present themselves to the treasurer general and shall state in writing the cause of that failure, the deputy or judge who made the survey for them and the payments they made.

101 "28. The treasurer shall fix for this purpose the time that seems to him proper and, as soon as he gets all the information together, shall render a report to the government, which shall order the proper steps to be taken with regard to the rights of the parties in interest and those of the treasury."

"31. Those who have an order for the registry of sitios under the former practice are guaranteed by this law."

The "government" referred to in section 28 was the chief executive of the State.

It clearly appears from these provisions that where a party claimed a tract of land by purchase under proceedings under the ordinance

of the intendants, not having received his final title, he could lay his case before the chief executive of the State, who had authority to investigate and determine the validity and extent of the claim, and if found to be valid, to order the proper steps to be taken to perfect the title.

The titulo introduced in evidence therefore proves that the grantees, Tomas and Ignacio Ortiz, presented their claim before the governor of Sonora and offered evidence in support of it; that the evidence produced showed that in the year 1812 Augustine Ortiz, a citizen of the presidio of Tucson, purchased at public sale two sitios of land for $747.00 and 3 reales, which he had paid into the treasury, together with all the costs and taxes and per cent. required by law.

That the land was situated at and comprised the old and dilapidated settlement of Aribac, in the jurisdiction of Pimera Alta, and that the landmarks of the boundaries of the tract were: On the north, on the high pointed hill or lookout hill, rising on the south of the Tagito mine and bordering on the Buenavista mountains; on the south, a low hill next to a cañon covered with trees and north of the Longorena mine; on the east, a mesquite tree with a cross on it, standing up the valley and to the east of the spring and at the border of the Calaberas mountain; on the west, a pointed hill at the Punta de Agua, opposite the Babuquivari mountain.

Upon the documentary and oral evidence submitted to him the governor made the following finding and order:

102 "Whereas, the possessory right of the citizens Tomas and Ignacio Ortiz has been legally proved, and the landmarks and boundaries of the two sitios that were registered and surveyed in the year 1812 at the place called Arabac still exist and have been recognized, and the principal value of the land has been paid to the public treasury, as is shown by the documents exhibited by their attorney; the treasury shall therefore order the grant to be issued to the interested parties who demand it, in accordance with the law."

It would seem to be a reasonable construction of the proceeding to say that it amounted to an adjudication by the officer authorized to make it; that the two sitios had been legally sold to Augustin Ortiz; that the purchase-money and all costs, taxes, etc., had been paid; that Tomas and Ignacio Ortiz had succeeded to the title of Augustin Ortiz, and were entitled to a grant title of the land, and that the boundaries were those above described. On that adjudication the title was issued.

The titulo, then, is of itself sufficient to prove the making of the grant, and this conclusion is not questioned in the case. The majority of the court, however, are of the opinion that the claim cannot be confirmed, on the ground that, in their opinion, the case does not satisfy the requirements of that provision of the treaty known as the Gadsden purchase, which is that no grants of land will "be respected or be considered as obligatory, which have not been located, and duly recorded in the archives of Mexico."

It is claimed that at the time — the making the treaty this grant had not been located and had not been duly recorded.

First. As to the question of location.

I take it that a grant has been located within the meaning of the provision of the treaty in question when it affects to convey a particular tract of land capable of identification to a reasonable certainty.

Now, giving this titulo the most narrow construction possible, it plainly purports to convey a tract of two sitios to a certain place, with a recital that the tract so conveyed is identified by boundaries which are evidenced by certain specified objects. By any fair construction, it purports on its face to convey the whole of the tract within these boundaries.

103 It does not say that it was the conveyance of a right to select two sitios thereafter to be identified and located within the prescribed outboundaries. It purports to be the final act of the government—the investiture of a complete title to a specified tract, with no future act to be performed.

The contention, however, is that inasmuch as the grant purports to be of only two sitios and the original sale, having been made in 1812, must have been a sale of a limited quantity, and the outboundaries mentioned in the grant containing in fact an area in excess of two sitios, it must be construed as a sale of a certain limited quantity to be thereafter selected within a larger tract and was necessarily in the nature of a float, and not "located," within the meaning of the treaty.

This contention demands consideration.

The grant recites that the original sale was made in 1812; therefore it must have been made under section 81 of the ordinance of the intendants as modified by the royal order of February 14, 1805 (Reynolds, 68). This order required, and it was the practice, that no more than four sitios could be sold to one person of wealth and no more than two to a poor person; that the lands should be surveyed and appraised and not be sold for less than the appraisement, and that the appraisement should not be less than certain fixed sums, regulated according to the character of the land.

Having in view these provisions and the recitals in the grant document, it is a necessary inference that the original sale was for a certain quantity of land, at the place specified, which had been surveyed by officers duly authorized to make the survey and appraised in pursuance of the royal order.

The question is therefore presented squarely, Do not the proceedings of the survey, appraisement, sale, and conveyance operate as a location of the tract sold within the meaning of the treaty?

In my judgment, the proceedings do have that effect.

The essential feature or object of the proceeding was the
104 protection of the revenue to ensure a fair value for the lands sold. To secure this end was the object of the appraisement. This was practically the only protection there was. The law fixed a minimum limit.

Now, what is an appraisement except an appraisement of a certain thing? How can a man appraise two sitios of land unless he knows what two sitios? How could the appraisers know what two

sitios they were to appraise? Why, this was the very object of the survey, to mark out on the ground the tract to be appraised and sold.

To survey a tract of land means to mark it on the ground, not in the air nor on paper. The surveyor was an officer of the government delegated to mark on the ground the tract sought to be purchased. When the survey was completed appraisers were summoned and sworn to appraise the tract of land surveyed. They were not authorized to determine whether the survey was correct or not, or whether it contained a greater area than the quantity sought to be purchased. In fact, they were not supposed to know what area was contained within the boundaries, nor what quantity was petitioned for. The surveyor was authorized to fix the boundaries and determine the quantity of land within these boundaries. The appraisers could not "go behind the return" of the surveyor as to the area of the tract surveyed. That was their guide, and they appraised that tract identified by the boundaries adopted by the surveyor as to the two sitios of land, which was the quantity determined by the surveyor to be contained within the boundaries.

By that survey and that appraisement the land was offered for sale at public auction at the capitol of the district, many miles from the land, and all the world was invited to come and buy; so I may say that the only fair construction of the transaction is that by the intent of the parties the outboundaries established by the surveyor were the boundaries of the two sitios appraised and sold, and evidenced the location of the tract sold.

Presumptively the survey was correctly made. The presumption of law is that an officer does his duty. Wherever the deter-
105 mination of any matter is committed to a public officer, the determination so made is binding until set aside in a proper proceeding. An error in the determination cannot be shown in a collateral way.

No survey is ever perfectly accurate. Never were two surveys made precisely alike. They are pre-eminently matters about which different men reach different conclusions. If the survey were in fact erroneous, covering an excess of land over the quantity directed to be surveyed, such error would not render the survey or subsequent proceedings based thereon void as to such excess, but rendered it voidable only as to such excess.

The error or mistake in the survey did not appear upon the face of the proceeding.

Now, it is a principle universally recognized that an official proceeding which is not void upon its face, but voidable only by reason of some mistake or error in the course of the proceeding, is valid and binding until set aside or annulled in a direct proceeding for that purpose.

The Supreme Court, in Graham *vs.* U. S., 4 Wall., 259, and U. S. *vs.* Pico, 5 Wall., 536, has clearly indicated that the proceedings of these officers in surveying and establishing the boundaries of tracts of land for purposes of segregation from the public domain are in

the nature of a judicial proceeding and have all the force and effect of judicial determinations binding upon the former government.

By this it is not meant that they are *res judicata*, finally and conclusively binding. A mistake is always open to correction, but can only be corrected in a proper proceeding.

The idea I seek to emphasize is well expressed in Smelting Company *vs.* Kemp, 104 U. S., on page 640.

"The patent of the United States is the conveyance by which the nation passes its title to portions of the public domain. For the transfer of the title the law has made numerous provisions designating the persons who may acquire it and the terms of acquisition. That the provisions may be properly carried out a Land Department, as part of the administration and executive branch of the Government, has been created to supervise all the various proceedings taken to obtain the title, from their commencement to their
106 close. In the course of their duty the officers of that department are constantly called upon to hear testimony as to matters presented for their consideration, and to pass upon its competency, credibility, and weight. In that respect they exercise a judicial function, and therefore it has been held in various instances by this court that their judgment as to matters of fact properly determinable by them is conclusive when brought to notice in a collateral proceeding. Their judgment in such cases is, like that of other special tribunals upon matters within their exclusive jurisdiction, unassailable except by a direct proceeding for its correction or annulment."

The views thus expressed are equally applicable to the proceedings of Spanish and Mexican officials in the disposition of the public domain. They are not merely an exposition of a peculiar rule of American law, but the expression of hard, common, human sense applicable to the world round.

My conclusion, therefore, is that the proceedings of the survey operate as a determination that the boundaries of the two sitios are the landmarks specified in the report of the survey, and that this determination remains true and binding until set aside in a proceeding for that purpose.

Such, it seems to me, was the view of the matter taken by both Spain and Mexico, as shown by the practice of those governments. By a proceeding of denouncement and composition, lands within these surveyed outboundaries could be surveyed, and if an excess were found it could be appraised and sold; but I think I can safely say that there was no other way in which the excess could be reached until denouncement was made and a determination was had of the question of an excess—that is to say, until the original survey was directly proceeded against and determined to be erroneous, the purchaser under the original proceeding held the possession and dominion of the entire tract, by its surveyed outboundaries, against all the world. By the original proceeding the entire tract was segregated from the public domain, and remained segregated until—a proceeding, under a denouncement for that purpose, the excess, or "de-

masias," was established or adjudged to exist and as such subject to sale. Until that occurred, there was no excess, of demasias.

On these views I base my conclusion that at the time of the
107 treaty the grant had been located within the meaning of the provision in question. Evidence has been introduced tending to confuse the question as — which of several are the true landmarks, especially on the north and south sides; but landmarks of the kind described in the survey are there. The only confusion is that more than one object is found answering the description. Of these it is our province and duty to determine, to the best of our judgment, which is the proper one.

Old Aribac is there; Aribac creek is there; the spring up the valley to the east is there; the Punta de Agua (meaning the point where the creek in ordinary stages sinks in the sand) is there; the cañon covered with trees, on the south, is there, and the range of mountains, on the north is there, and there is the tract, beyond the possibility of a doubt.

Second. As to the question of the record.

The only record at this time found in the archives of Mexico concerning this grant is an entry in the Toma de Razon for the year 1833, as follows:

"On the 12th day of July there was delivered to Captain Don Ignacio Elias Gonzales the grant title, issued on the 2nd day of July of the current year, for two sitios of land for raising cattle and horses, which *is* comprised in the place called Aribac, situate in the jurisdiction of the Upper Pima country, in favor of citizens Tomas and Ignacio Ortiz, residents of the presidio of Tubac; Milla."

The contention is that this is not a sufficient record of the grant within the meaning of that provision of the treaty, "nor will any grants of land be respected or be considered obligatory which have not been located and duly recorded in the archives of Mexico."

There is no question but that the Toma de Razon is a public record, and that it was the duty of the officer issuing the grant title or "titulo" to make an entry in that book of the fact, just as was done in this case.

The entry proves the issue of the title, and when the title itself is found, confessedly genuine and conforming exactly to the title in the Toma de Razon, the proof is convincing beyond reasonable
108 doubt that that title was legally issued, and that it is the act, and all its recitals are the declarations, of the government.

The titulo in this case, therefore, supported as it is by the record, is proof of the truth of the facts recited in it.

This titulo sets out what is purported to be a copy of the proceedings had in the case, the expediente, in other words, followed by a granting clause, as was the almost universal practice in such cases. The original proceedings so copied are a part of the archives of the government, and must necessarily exist in order to authorize the officer to issue the title, so that a recital in the titulo of the existence of the original proceedings, or expediente, is a proper recital and is to be taken as true.

The recital of the copy of the expediente in this titulo shows that the expediente itself contained at its conclusion this declaration:

"In these terms this expediente was completed with all the requisites and formalities established by law, and it remains in the archives of this office as a perpetual record."

Is there anything in evidence to create in the mind a reasonable doubt of the truth of that statement? The existence of the titulo itself and of the record in the Toma de Razon are sufficient to convince the ordinary mind, reasoning from a knowledge of the requirements of the law and the uniform practice in such cases and the presumption which attends the performance of official acts, that at the time of the issue of the titulo the grant was duly recorded in the archives of Mexico.

And in this connection I wish to emphasize the point that it is simply a question of fact, to be proven like any other fact, as to whether the grant had been recorded.

The treaty does not stipulate for a grant which now is on record, but for a grant which has been recorded. It did not stipulate that, even though a grant had been duly recorded, yet if that record had been lost or destroyed the grant was forfeited. The object of the stipulation was that the United States should have fair and substantial protection against fraudulent and floating grants. It was not intended to be used as a club to defeat honestly acquired titles.

109 The record stipulated for was the system of records as maintained in Mexico, not for the recording acts of any of our States.

The evidence brings this grant strictly within the letter of the treaty. The record was made full and complete. The fact that the expediente is not now in the archives only shows that the document has been lost; it does not show that it never existed there, nor does it show that the document was not there at the time of the treaty.

The entry in the Toma de Razon is a record of the fact of the making of the grant and of the issue of the title. It is true that it did not contain a precise delineation of the outer boundaries, but it fulfilled the spirit of the requirement of the treaty. It showed that the two sitios comprising Ald Arabac had been granted; it put the United States on inquiry, and pointed out the leading-strings of the whole facts, and that is all that is required of a record.

I think the treaty was fulfilled, both in letter and in spirit, and the claim should be confirmed for two sitios, and that the preliminary survey made by the surveyor general of Arizona should be adopted as a fair delineation of the boundaries.

(S'g'd) HENRY C. SLUSS,
Associate Justice.

I fully concur in the foregoing opinion of Mr. Justice Sluss, both in his conclusions and the soundness of his reasoning, since, upon the undisputed facts in evidence, I can conceive no other rational

and just conclusion than the one so clearly deduced by my associate, Justice Sluss.

(S'g'd) WILBUR F. STONE,
Associate Justice Court P. L. C.

Filed in the office of the clerk, court of private land claims, Feb. 10, 1900.

JAS. H. REEDER, *Clerk*,
By —— ——, *Deputy*.

110 And be it further remembered that afterward, to wit, on the 7th day of April, A. D. 1900, the following affidavit and motion *was* filed in the office of the clerk, at Santa Fé, N. M.:

In the United States Court of Private Land Claims.

ARIVACA LAND AND CATTLE COMPANY, Plaintiff, vs. THE UNITED STATES ET AL., Defendants. } Affidavit and Motion for Rehearing.

Comes now Arivaca Land and Cattle Company, by Rochester Ford, its attorney, and moves the court to vacate and set aside its judgment and decree herein and grant a rehearing and new trial of this cause for the following reasons:

I.

That the said judgment and decree are contrary to the evidence, in holding that the grant herein was not sufficiently located.

II.

That since the decree was rendered in this case new and material evidence has been discovered of the location of one of the landmarks defining the grant, to wit, the Longorena mine; that heretofore, to wit, on March 27, 1900, Col. C. D. Posten informed affiant that the mine designated as the Longorena mine on the map herein by Ygnacio Bonillas was known to the said Posten by that name as early as the year 1856, and that it was generally known by that name by the Mexicans residing at and near Arizaca at that time.

III.

That this knowledge on the part of Col. C. D. Posten was not known to counsel before the said 27th day of March, 1900.

Counsel further represents that if he is permitted to introduce additional evidence in this case he can, as he is informed and believes, satisfactorily identify the location of the said tract of land.

Counsel further represents to the court that two of the members of the court were of the opinion that the grant was satisfactorily identified, and that, as above stated, additional evidence, which will

be put in if this motion is granted, will remove any doub as
111 to the location of the said grant; and counsel further represents that this application is not made for delay, but counsel believes that justice will be subserved if further evidence is introduced.

ROCHESTER FORD.

Subscribed and sworn to before me this 5th day of April, 1900.

[Seal of Wiley E. Tussing, Notary Public, Pima Co., A. T.]

WILEY E. TUSSING,
Notary Public, Pima County, Arizona.

My commission expires April 29, 1901.

Filed in the office of the clerk, court of private land claims, April 7, 1900.

JAS. H. REEDER, *Clerk.*
By —— ——, *Deputy.*

112 And be it further remembered that afterward, to wit, on the 25th day of April, A. D. 1900, before the court, sitting at Santa Fé, N. M., the following order was made, to wit:

THE ARIVACA LAND AND CATTLE COMPANY
vs.
UNITED STATES ET AL. } No. 7.

Now, on this 25th day of April, A. D. 1900, this cause came on for hearing before the court in regular session at Santa Fé, N. M., on plaintiff's motion to vacate and set aside the judgment and decree in this cause heretofore entered, and the court, having heard and considered the evidence offered in support of said motion and the arguments of counsel and being advised in the premises, it is ordered that said motion be overruled.

(Signed) JOSEPH R. REED,
Chief Justice

And be it further remembered that thereafter there was filed in the office of the clerk an appeal and allowance and a citation; which appeal and allowance and citation are in the words and figures following, to wit:

113 In the United States Court of Private Land Claims.

THE ARIVACA LAND AND CATTLE COMPANY
vs.
THE UNITED STATES OF AMERICA, N. W. BERNARD, J. W. Hogan, Salvador Piguitori, Ignatio Ortiz, Antonio Aguirre, Antonio Cora, Indalcio Aguirre, Pedro Meranda, Jesus Silvas, Francisco Tapio, Charles Weatherington, W. S. McKnight, John Kelner, Ramon Zepado, Pedro Zepado, Patsey Powers, Miguel Moreno, Refil S. de Wilbur, J. B. Conti, H. Menager, H. N. Laboree, A. Hemme, —— Suarez, Richard Roe, John Doe, and Anselmo Anselmus.

Case Number 7.
Arivaca Grant.

The above-named plaintiff, conceiving itself aggrieved by the order and judgment entered on February 10, 1900, in the above-entitled cause, prays that it be allowed an appeal herein, returnable sixty days from the date thereof, and does hereby appeal from said order and judgment to the Supreme Court of the United States, and further prays that a transcript of the record and proceedings and papers upon which said order and judgment were made, duly authenticated, may be sent to the Supreme Court of the United States.

ROCHESTER FORD,
Attorney for Arivaca Land & Cattle Co.

Tucson, Arizona Territory, June 13, 1900.

And now, to wit, on June 18, 1900, it is ordered that the appeal be allowed as prayed for.

JOSEPH R. REED,
Chief Justice, Court of Private Land Claims.

Due and legal service of copy of the foregoing application for an appeal and allowance thereof is hereby acknowledged this — day of June, 1900.

MATT. G. REYNOLDS.
U. S. Attorney, Court of Private Land Claims.
WM. H. BARNES,
BARNES & MARTIN,
Attorneys for Other Defendants.

114 In the United States Court of Private Land Claims.

THE ARIVACA LAND & CATTLE COMPANY
vs.
THE UNITED STATES OF AMERICA, N. W. Bernard, J. W. Hogan, Salvador Piguitori, Ignatio Ortiz, Antonio Aguirre, Antonio Cora, Indalcio Aguirre, Pedro Meranda, Jesus Silvas, Francisco Tapio, Charles Weatherington, W. S. McKnight, John Kelner, Ramon Zepado, Pedro Zepado, Patsey Powers, Miguel Moreno, Refil S. de Wilbur, J. B. Conti, H. Menager, H. N. Laboree, A. Hemme, —— Suarez, Richard Roe, John Doe, and Anselmo Anselmus.

Case Number 7, Arivaca Grant.

UNITED STATES OF AMERICA, *ss:*

To The United States of America, N. W. Bernard, J. W. Hogan, Salvador Piguitori, Ignatio Ortiz, Antonio Aguirre, Antonio Cora, Indalcio Aguirre, Pedro Meranda, Jesus Silvas, Francisco Tapio, Charles Weatherington, W. S. McKnight, John Kelner, Ramon Zepado, Pedro Zepado, Patsey Powers, Miguel Moreno, Refil S. de Wilbur, J. B. Conti, H. Menager, H. N. Laboree, A. Hemme, —— Suarez, Richard Roe, John Doe, and Anselmo Anselmus:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the court of private land claims, district of Arizona, wherein The Arivaca Land and Cattle Company — and The United States of America, N. W. Bernard, J. W. Hogan, Salvador Piguitori, Ignatio Ortiz, Antonio Aguirre, Antonio Cora, Indalcio Aguirre, Pedro Meranda, Jesus Silvas, Francisco Tapio, Charles Weatherington, W. S. McKnight, John Kelner, Ramon Zepado, Pedro Zepado, Patsey Powers, Miguel Moreno, Refil S. de Wilbur, J. B. Conti, H. Menager, H. N. Laboree, A. Hemme, —— Suarez, Richard Roe, John Doe, and Anselmo Anselmus are respondents, to show cause, if any there be, why the judgment rendered against the said appellant in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

115 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 18 day of June, 1900.

JOSEPH R. REED,
Chief Justice, Court of Private Land Claims.

Due and legal service of the foregoing citation is hereby acknowledged this 18 day of June, 1900.

MATT. G. REYNOLDS,
U. S. Attorney, Court of Private Land Claims.
WM. H. BARNES,
BARNES & MARTIN,
Attorney- for Other Defendants.

116 *Certificate of the Clerk.*

UNITED STATES OF AMERICA, }
Territory of Arizona. }

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing is a full, true, and correct transcript of the pleadings, testimony, proceedings, judgment, opinions, and order allowing appeal, and citation in the case entitled The Arivaca Land and Cattle Company, plaintiff, against The United States *et al.*, No. 7, Aribac grant, as the same appears from the records of my office.

Given under my hand and the seal of said court this 13th day of August, A. D. 1900.

[Seal Court of Private Land Claims, Tucson, Arizona.]

JAMES H. REEDER, *Clerk*,
By R. L. LONG, *Deputy Clerk.*

117 In the Supreme Court of the United States.

ARIVACA LAND AND CATTLE COMPANY }
vs. } No. 414.
THE UNITED STATES. }

It is stipulated herein that defendants' photographic exhibits, numbers 2 to 7, inclusive, which accompanied the transcript from the court of private land claims, may be omitted from the printed record in this cause, and the clerk of the Supreme Court of the United States is hereby requested to omit the said exhibits.

ROCHESTER FORD,
Attorney for Arivaca Land and Cattle Co.
MATT. G. REYNOLDS,
Attorney for the United States.

Approved:
J. K. RICHARDS,
Solicitor General, for the United States.

[Endorsed:] In the Supreme Court of the United States. No. 414. Arivaca Land and Cattle Co. *vs.* The United States. Stipulation.

118 [Endorsed:] File No., 17,899. Supreme Court U. S., October term, 1900. Term No., 414. The Arivaca Land and Cattle Co., app't, *vs.* The United States *et al.* Stipulation to omit certain parts of record in printing. Filed May 28, 1901.

Endorsed on cover: File No., 17,899. Court of private land claims. Term No., 153. The Arivaca Land and Cattle Company, appellant, *vs.* The United States *et al.* Filed September 5th, 1900.